

NEVADA DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES

NEVADA ENVIRONMENTAL COMMISSION

HEARING ARCHIVE

FOR THE HEARING OF May 10, 2001

HELD AT: Reno, Nevada

TYPE OF HEARING:

YES	REGULATORY
	APPEAL
	FIELD TRIP
	ENFORCEMENT
	VARIANCE

RECORDS CONTAINED IN THIS FILE INCLUDE:

YES	AGENDA
YES	PUBLIC NOTICE
YES	VERBATIM TRANSCRIPT OF HEARING
YES	LISTING OF EXHIBITS

NEVADA STATE ENVIRONMENTAL COMMISSION
A G E N D A
May 10, 2001

The Nevada State Environmental Commission will conduct a public hearing commencing at **9:00 a.m. on Thursday, May 10, 2001, at the Nevada Division of Wildlife, Conference Room B, 1100 Valley Road, Reno, Nevada.**

This agenda has been posted at the Clark County Library and the Grant Sawyer State Office Building in Las Vegas, the Washoe County Library and the Division of Wildlife in Reno, the Department of Museums, Library and Arts and the Division of Environmental Protection Office in Carson City. The Public Notice for this hearing was published on April 10, April 19 and April 25, 2001 in the Las Vegas Review Journal and Reno Gazette Journal newspapers.

The following items will be discussed and acted upon but may be taken in different order to accommodate the interest and time of the persons attending.

I. Approval of minutes from the February 15, 2001 meeting. * ACTION

II. Regulatory Petitions * ACTION

A. Petition 2001-03 is a temporary amendment to NAC 444A.005 to 444A.470 to extend programs for separating at the source recyclable material from other solid waste to include public buildings in counties with populations greater than 100,000. The proposed temporary regulations add for public buildings the minimum standards and a model plan which were previously established for the source separation of recyclables at residential premises. Definitions for public building, paper and paper product are added. NAC 444A.120 is proposed to be amended to add public buildings and 444A.130 is amended to provide for a municipality to make available a source separation of recyclable materials at public buildings.

B. Petition 2001-04 is a temporary amendment to NAC 232 and/or NAC 444A. The proposed temporary regulation prescribes the paper and paper product recycling procedures for state agencies. The temporary regulation provides criteria for exemption from the recycling requirements, provides for clearly labeled containers, establishes reporting criteria by state agencies and requires a building recycling plan to be submitted to the Division of Environmental Protection.

C. Petition 2000-12 (LCB R-117-00) is a permanent amendment to NAC 445B.001 to 445B.395, the air pollution control regulations. Amended is NAC 445B.194, which limits the criteria for temporary sources. NAC 445B.287 redefines the requirement when an operating permit or permit to construct is required. NAC 445B.288 redefines insignificant activities. NAC 445B.290 requires new stationary Class I sources to submit an application. NAC 445B.295 redefines the requirements for compliance plans. NAC 445B.316 amends the description of emissions trading to be modified to ensure consistency with 40 CFR Part 70 and provides conditions governing a permit shield. And, finally, NAC 445B.331 is amended for change of location fees for Class I and II sources requiring 10 days advanced notice.

D. Petition 2001-05 is a temporary amendment to NAC 445B.001 to 445B.395, the state air pollution control permitting program. The proposed temporary regulation amends NAC 445B by creating and defining a new classification of operating permits. The new Class III permit will provide eligible sources (those emitting 5 tons or less of specific pollutants) a streamlined permitting process, which includes accelerated permit review and issuance and lower permitting fees. This regulation will provide regulatory relief for small quantity sources.

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E. Petition 2001-07 is a temporary amendment to NAC 445A.810 to 445A.925, the underground injection control (UIC) program. The proposed amendment provides that "other Sensitive Groundwater Areas" can be determined to meet compliance with the proposed regulations. The regulations revise outdated Nevada Revised Statute references, the expansion of minor permit modification criteria and logistics, the expansion of temporary permit criteria, methods to establish permit limits in the absence of specific standards, and the prohibition on treated effluent is to be repealed. New definitions for cesspool, Class V Rule, delineation, drywell, groundwater protection area, improved sinkhole, other sensitive groundwater area, motor vehicle waste disposal well, point of injection, sanitary waste, septic system, source water assessment and protection program, subsurface fluid distribution system, are proposed amendments. Restrictions are imposed on Motor Vehicle Waste Disposal wells. Fees for renewals in NAC 445A.872 are reduced, repealed and incorporated into the existing annual fee. This fee category is expanded to include major modifications.

III. Petitions Returned by the Legislative Commission pursuant to NRS 233B.067(4) * ACTION

A. Petition 2000-10 (LCB R-104-00) is a permanent amendment to NAC 445A.119 to 445A.225, the water pollution control standards for water quality. The amendment adds new water quality standards and beneficial uses for Walker Lake and amends the standards for various reaches of the East and West forks of the Walker River. A new control point is proposed to be added on the east Walker River at Bridge B-1475 at the state line with California. Amendments are proposed for NAC 445A.159 to 445A.169, inclusive including Sweetwater Creek and Desert Creek of the Walker River. Amendments vary for each reach defined above, but include: temperature, pH, total phosphates, nitrogen species as N, Dissolved Oxygen, suspended solids, turbidity, color, total dissolved solids, chloride, sulfate, the sodium adsorption ratio, alkalinity and Escherichia coli. It is proposed to revise the time period that adult Lahontan cutthroat trout may be present in the reach from Walker Lake to Weber Reservoir. (Adopted by the Environmental Commission on February 15, 2001 and heard and acted upon by the Legislative Commission on April 17, 2001)

IV. Settlement Agreements on Air Quality Violations * ACTION

- A. Priske Jones; Notice of Alleged Violation #1459
- B. CB Aggregate; Notice of Alleged Violation #1461, 1462 & 1463
- C. A & K Earthmovers; Notice of Alleged Violation # 1465
- D. Rees's Enterprise; Notice of Alleged Violation # 1468
- E. Frehner Construction Co.; Notice of Alleged Violation #1473
- F. Round Mountain Gold Corporation; Notice of Alleged Violation #1508, 1510 & 1511

V. Review of Commission Rules of Practice Pursuant to NRS 233B.050(d) * ACTION

VI. Status of 2001 Legislative Session

VII. Status of Division of Environmental Protection's Programs and Policies

VIII. General Commission or Public Comment

Copies of the proposed regulations may be obtained by calling the Executive Secretary at (775) 687-4670, extension 3118. The public notice and the text of the proposed permanent regulations are also available in the State of Nevada Register of Administrative Regulations which is prepared and published monthly by the Legislative Counsel Bureau pursuant to NRS 233B.0653. The proposed regulations are on the Internet at <http://www.leg.state.nv.us>. In addition the State Environmental Commission maintains an Internet site at <http://www.ndep.state.nv.us/admin/envir01.htm>.

Persons with disabilities who require special accommodations or assistance at the meeting are requested to notify David Cowperthwaite, Executive Secretary in writing at the Nevada State Environmental Commission, 333 West Nye Lane, Room 138, Carson City, Nevada, 89706-0851 or by calling (775) 687-4670, extension 3117, no later than 5:00 p.m. **May 4, 2001.**

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NEVADA STATE ENVIRONMENTAL COMMISSION NOTICE OF PUBLIC HEARING

The Nevada State Environmental Commission will hold a public hearing beginning at **9:00 a.m. on Thursday, May 10, 2001, at the Nevada Division of Wildlife's Conference Room A, located at 1100 Valley Road, Reno, Nevada.**

The purpose of the hearing is to receive comments from all interested persons regarding the adoption, amendment, or repeal of regulations. If no person directly affected by the proposed action appears to request time to make an oral presentation, the State Environmental Commission may proceed immediately to act upon any written submission.

1. Petition 2001-07 is a temporary amendment to NAC 445A.810 to 445A.925, the underground injection control (UIC) program. The proposed amendment provides that "other Sensitive Groundwater Areas" can be determined to meet compliance with the proposed regulations. The regulations revise outdated Nevada Revised Statute references, the expansion of minor permit modification criteria and logistics, the expansion of temporary permit criteria, methods to establish permit limits in the absence of specific standards, and the prohibition on treated effluent is to be repealed. New definitions for cesspool, Class V Rule, delineation, drywell, groundwater protection area, improved sinkhole, other sensitive groundwater area, motor vehicle waste disposal well, point of injection, sanitary waste, septic system, source water assessment and protection program, subsurface fluid distribution system, are proposed amendments. Restrictions are imposed on Motor Vehicle Waste Disposal wells. Fees for renewals in NAC 445A.872 are reduced, repealed and incorporated into the existing annual fee. This fee category is expanded to include major modifications.

The proposed permanent regulation is not anticipated to have any significant adverse short or long-term economic impact on Nevada businesses. Businesses with motor vehicle waste disposal wells may see an increase in operation and maintenance costs associated with sampling and monitoring of wells. The adoption of this regulation is not anticipated to have a direct short or long term adverse economic impact upon the public. The Division of Environmental Protection is developing a mechanism using \$ 820,000 of funding from the Drinking Water State Revolving Fund over a five-year period to implement the new regulations associated with the federal Class V well rule. The proposed regulations do not overlap or duplicate any regulations of another state or local governmental agency. The proposed regulations are amended to reflect federal UIC regulations for Class V Rule, as published on December 7, 1999 to impose additional restrictions on injection wells. The regulations are no more stringent than federal regulations. There is no additional direct cost to the agency for enforcement. Implementation of this regulation is done in cooperation with the U.S. Geological Survey. This regulation reduces the renewal fee and incorporates major modifications into the annual and revised renewal fee structure.

Note: Petition 2000-12 (LCB R-117-00) a permanent amendment to NAC 445B.001 to 445B.395, the air pollution control regulations and Temporary petition 2001-05 amends NAC 445B by creating and defining a new class III air pollution operating permits were previously noticed for the February 15, 2001 hearing. Temporary Petitions 2001-03 and 2001-04, dealing with recycling in public buildings was also previously noticed for the February 15, 2001 hearing. These four petitions will also be heard on May 10, 2001.

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Pursuant to NRS 233B.0603 the provisions of NRS 233B.064 (2) are hereby provided:

"Upon adoption of any regulation, the agency, if requested to do so by an interested person, either prior to adoption or within 30 days thereafter, shall issue a concise statement of the principal reasons for and against its adoption, and incorporation therein its reason for overruling the consideration urged against its adoption."

Persons wishing to comment on the proposed regulation changes may appear at the scheduled public hearing or may address their comments, data, views or arguments, in written form, to the Environmental Commission, 333 West Nye Lane, Carson City, Nevada 89706-0851. Written submissions must be received at least five days before the scheduled public hearing.

A copy of the regulations to be adopted or amended will be on file at the State Library, 100 Stewart Street and the Division of Environmental Protection, 333 West Nye Lane - Room 104, in Carson City and at the Division of Environmental Protection, 555 E. Washington - Suite 4300, in Las Vegas for inspection by members of the public during business hours. In addition, copies of the regulations and public notices have been deposited at major library branches in each county in Nevada. The notice and the text of the proposed regulations are also available in the State of Nevada Register of Administrative Regulations which is prepared and published monthly by the Legislative Counsel Bureau pursuant to NRS 233B.0653. The proposed regulations are on the Internet at <http://www.leg.state.nv.us>. In addition, the State Environmental Commission maintains an Internet site. It is at <http://www.ndep.state.nv.us/admin/envir01.htm>. This site contains the public notice, agenda, codified regulations, and petitions for pending and past commission actions.

Members of the public who are disabled and require special accommodations or assistance at the meeting are requested to notify, in writing, the Nevada State Environmental Commission, in care of David Cowperthwaite, 333 West Nye Lane, Room 138, Carson City, Nevada, 89706-0851, facsimile (775) 687-5856, or by calling (775) 687-4670 Extension 3118, no later than 5:00 p.m. on May 1, 2001.

This public notice has been posted at the following locations: Clark County Public Library and Grant Sawyer Office Building in Las Vegas, Washoe County Library and Division of Wildlife in Reno, Division of Environmental Protection, and the Department of Museums, Library and Arts in Carson City.

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STATE ENVIRONMENTAL COMMISSION

Meeting of May 10, 2001

Nevada Division of Wildlife

Reno, Nevada

Verbatim Transcript

MEMBERS PRESENT:

Melvin Close, Chairman

Alan Coyner, Vice Chairman

Terry Crawford

Demar Dahl

Mark Doppe

Fred Gifford

Paul Iverson

Joseph L. Johnson

Hugh Ricci

Steve Robinson

MEMBERS ABSENT:

Joey A. Villaflor

Staff Present:

Deputy Attorney General Susan Gray - Deputy Attorney General

David Cowperthwaite - Executive Secretary

Sheri Gregory - Recording Secretary

Chairman Close called the meeting to order. He noted that the meeting had been properly noticed in compliance with the Nevada Open Meeting Law.

Agenda Item I. Approval of minutes from the February 15, 2001 meeting.

Commissioner Coyner: For the record Alan Coyner. The spelling of the witness that appeared on page 9 of the minutes that's referred to as Mr. Strack is Donald Strachan.

Chairman Close: Any other modifications? Is there a motion?

Commissioner Ricci moved for acceptance of the minutes as amended.

Commissioner Gifford seconded the motion.

The motion carried unanimously.

Chairman Closed moved to Agenda Item II. Regulatory Petitions, Petition 2001-03.

(Petition 2001-03 is a temporary amendment to NAC 444A.005 to 444A.470 to extend programs for separating at the source recyclable material from other solid waste to include public buildings in counties with populations greater than 100,000. The proposed temporary regulations add for public buildings the minimum standards and a model plan which were previously established for the source separation of recyclables at residential premises. Definitions for public building, paper and paper product are added. NAC 444A.120 is proposed to be amended to add public buildings and 444A.130 is amended to provide for a municipality to make available a source separation of recyclable materials at public buildings.)

Les Gould: Good morning members of the Commission. My name is Les Gould. I am the supervisor of the Solid Waste Branch in the Bureau of Waste Management of the Division of Environmental Protection. Today I'm presenting two distinct, but related petitions concerning recycling of solid waste. In the development of these petitions the Division sent public notices to approximately 275 stakeholders and held public workshops in Carson City and Las Vegas on October 18 and 20 2000. As a result of the public comments during the workshops, the Division has modified both of those

proposed regulations. We also prepared a summary of the comments with the Division's responses and mailed the summary and the revised draft regulation to the workshop attendees. The petitions, the model plan, and the response to public comments are posted on the NDEP Website. First is the Petition 2001-03, Public Buildings Recycling regulation and Model Plan. This petition is intended to implement a portion of Assembly Bill 564 passed in the 1999 legislature which aims to make recycling available at public buildings. AB 565 directed the State Environmental Commission to adopt minimum standards and a model plan for separation at the source of the recyclable materials generated at public buildings. The SEC previously adopted such standards and a model plan for providing residential recycling services. Sections 1 and 2 of the petition before you establish definitions of a public building and for paper and paper products. Section 3, page 2, line 24, amends the existing standards in Nevada Administrative Code 444A.120 which pertain to the conditions of approval of municipal recycling programs by inserting the words "and public buildings." The effect is to require that municipalities with populations over 100,000, that is Clark and Washoe Counties must adopt programs which include the collection of recyclable materials from public buildings. On page 3, line 16, new language to NAC 444A.130 requires that such programs designate at least three recyclable materials to be so separated. At this time I propose to amend the petition by adding a Section 5 to provide an effective date for this regulation. And I would like Section 5 to read, and I believe that you have copies of that.

David Cowperthwaite:
Mr. Gould:

Exhibit 6.

Section 5, "The Board of County Commissioners in a county whose population is more than 100,000 or its designee shall comply with the provisions of Sections 1 to 4, inclusive, of this regulation by July 1, 2002." This petition also requests adoption of the public buildings recycling programs' model plan. This model plan has been developed as a guidance document for municipal governments, recycling contractors and the owners and occupants of public buildings in the development of programs for recovering recyclable materials from public buildings. I believe you have all received copies of the model plan as well. Are there any questions about this petition?

Chairman Close:
Commissioner Doppe:

Are there any questions?

Les I have two questions. The definitions for paper or paper products are consistent with, there are definitions elsewhere?

Mr. Gould:

Yes. I just borrowed those from a section in the statute which define paper and paper products.

Commissioner Doppe:

Okay thanks. The other question Les is the very last paragraph, "shall designate at least three recyclable materials." That's not your idea, that's coming down from the statute?

Mr. Gould:

The statute requires minimum standards to be established in the code and that is one minimum standard. We had discussed in the workshops making that number 5, but the standard which currently applies at residential recycling programs is 3 and partly to make it consistent with that existing standard for residential programs we inserted the number 3 for that.

Commissioner Doppe:
Mr. Gould:

Doesn't that leave you in a position where it's either 3 or 0?

How do you mean?

Commissioner Doppe:
Mr. Gould:

Well I guess they have to do a minimum of 3 by definition I guess.

Right. Not necessarily, I mean there will be some programs that will do more I think, if that's your question. I think that in many cases, just as in residential programs, other materials are marketable and would be collected also.

Chairman Close:
Commissioner Gifford:

Any other questions?

Les do you have any idea of what the economics of this program will be? I know other places, UNR for example, when they started their recycling program on the campus here they started out way behind the ball, the eight ball there, in terms of the economics and they may have caught up on it by now. But I haven't kept up on it so I'm not sure. Is this actually going to save money, or increase costs, or what's your feeling on that?

Mr. Gould:

I think that if it's done well it can be done at no significant additional cost and there's a

potential that it could be an opportunity for some recycling businesses to actually grow and profit from it. Especially when you consider that public buildings typically generate about 75 percent of their waste stream is paper and paper is one of the higher value products of the recyclable materials that are available. There are well-established markets for paper and paper products. So, it remains to be seen, but if good programs are set up at the public buildings at which large quantities or large portion of the waste stream is actually diverted and made available for collection and the programs include as many public buildings as possible, I think there's a good opportunity for recycling business to actually do it at no additional cost.

Chairman Close: Les I recall when we talked about this a couple of years ago there was a glut on the market for paper products and it really was not even re-sellable. You almost had to pay someone to take it. Has that situation changed now?

Mr. Gould: Yes it has, although the markets do fluctuate and of course there was a time when people were collecting vast quantities of newspaper and storing it in warehouses and that made headlines across the country. But more and more of the paper mills have geared up to process recovered paper as opposed to virgin materials. The markets overseas have grown also. So, I think that there are well-established markets especially for paper. The potential that the prices may go down and it could hurt the collectors and the marketers is certainly still there, but . . .

Chairman Close: And so if that happens what happens to what we're collecting. If nobody wants it then what do you do with it? The collectors collect it and they can't get rid of it, what happens?

Mr. Gould: I think that in the case of paper what would probably happen is it would probably continue to be marketed, but perhaps at a net loss by the companies that are doing it. In that respect I suppose it's, you know there are other commodities that suffer the same types of market fluctuations.

Commissioner Coyner: Alan Coyner for the record. Does public building include a private building that houses a State agency that rents space in that building?

Mr. Gould: Yes. I would have to go back and see what the definition says here. I believe it says a building, which is occupied by a public agency, and it lists the public agencies for the purposes of carrying out public business.

Commissioner Coyner: So the owner of the building would be responsible for setting up the recyclable containers, etc. and maintaining them?

Mr. Gould: This regulation actually applies to the municipality, not directly to the public building owner. It basically requires that the program be available for collection of materials if the public building owner wants to use it. Federal and State government buildings are required by other laws to establish recycling programs. So, they would be required under other regulations and laws to do that, but not under this regulation. This regulation would require that the municipality see that a collection service is available.

Comm. Crawford: Do the affected agencies and businesses have three recyclables?

Mr. Gould: Yes. It seems to me that at our agency, at Environmental Protection, we actually use the local collection service for office paper, cardboard, plastics, steel cans, aluminum and newspaper and magazines also. Of course the greatest bulk is the office paper. So potentially a minimum of three recyclable materials could include office paper, newsprint and card board, which are three of the higher valued recyclable materials.

Comm. Crawford: So each of those is separate?

Mr. Gould: Each of them would be separate, yes.

Comm. Crawford: Would be separate recyclables?

Mr. Gould: Yes.

Comm. Crawford: What's the Department's plan in implementing advising people of this new requirement?

Mr. Gould: We see that we've got our work cut out for us there. We advertised our workshops pretty extensively, but we didn't get a lot of people coming to the workshops. We plan to go out and make contact to, first of all we'll have to send notices to agency heads and try to set up a meeting or a call and establish a contact within the agency that we can work with on establishing these programs. The statutes also require our agency to provide technical assistance in establishing these programs.

Comm. Crawford: What's the size of the Department's, the Division's program?
Mr. Gould: We have two people in our recycling program and we may use a portion of another staff position to do this over the next year. This is one reason why we put a longer implementation schedule on this regulation and on the State agency regulation, which comes next, to allow us time to get out to the public building owners and the State agencies to meet the requirements. There is a potential we haven't decided on this yet, but there's a potential that we may try to contract to engage someone with experience in setting up institutional recycling programs to help us with this.

Comm. Crawford: What's the funding source for the Division's activities?
Mr. Gould: All of the Solid Waste program is funding through the tire fee. It's a \$1 per tire sold at retail.

Chairman Close: Any other questions?
Commissioner Iverson: I think the Chairman had an interesting point when he talked about the glut. It was probably 20 years ago David and I both worked at an unusual agency where this started to grow and it was called the Department of Energy then for the State and paper recycling was one of the programs that we initiated in this State 20 years ago and I'm sure you still see the containers around the State. I haven't been involved with this for a long, long, long, time, but is there a provision in State government, in local government in the public sector where we have to buy recycled paper?

Mr. Gould: Yes there is and of course that's one of the things, I guess one of the requirements that's in place to help develop the markets because the markets have been seen to be kind of a weak link in the system. The State Purchasing Division is required to buy recyclable paper. To what extent that is being done right now, I'm not sure. It is to some extent and there are provisions also to allow purchasing agents in State government to purchase recycled materials even if there is a 10 percent cost difference, or a 10 percent greater cost for that material. That is another aspect of this program that we'd like to put forward at the same time. That is a procurement policy to encourage purchasing of recyclable materials. Does that answer your question?

Commissioner Iverson: Yes.
Commissioner Ricci: Les, is there any penalty for somebody not adhering to this?
Mr. Gould: Well, we'll just be on their case to the extent that we can. There are no enforcement provisions in the statute and none were adopted and none are proposed today.

Commissioner Doppe: Les, I'm looking at your amendment again, and I'm sorry I wasn't keeping up with you when you were reading it. The only time limit, the only one that the time limit applies to is the Board of County Commissioners, so just a county government?

Mr. Gould: That's right and that tends to be a misunderstanding at first to people who are looking at this. This is not a burden that's being established by law on somebody who owns a public building. It's a burden to say that that building should have the opportunity to recycle the material and therefore the municipality has to set up a program to make sure that service is available. The model plan that we're proposing suggests some ways of doing that.

Commissioner Doppe: And by inference then, it's the municipality, it is not the city that's forced to comply or the State government, or the university or anything else, it's the County Commission that sets up the program?

Mr. Gould: Right. The statute uses the language "Board of County Commissioners in a county of a population over 100,000 or its designee." So, for instance, in Clark County or Washoe County it could designate the Solid Waste Management Authority, which as broad jurisdiction, that is the Clark County Health District, over the whole, for the whole jurisdiction to set up a program.

Commissioner Doppe: And for all the rest of the State then, other than Washoe County and Clark County and those governmental agencies that happen to reside in those two counties, there's no time limit at all when this thing kicks in?

Mr. Gould: It's not required in any area except for within those counties with populations over 100,000. So, in other areas of the State it's not required. We're going to promote it, I think, as part of the, well, we will be promoting it because we're going to be talking to State agencies throughout the State on this too.

Chairman Close: Is there questions? Thank you. Does anyone else wish to testify in this matter? I might remind you that if you want to speak on a matter, there are sign-up cards. Please sign up, provide them to our secretary so that we'll be aware of you and be sure and call you when your matter comes up. Any further comment among the Commission members on this matter? Is there a motion?

Commissioner Doppe: Mr. Chairman I make a motion to approve Petition 2001-03 as amended.

Commissioner Gifford: I'll second.

Chairman Close: Any further comment? All in favor?

The motion carried unanimously.

Chairman Close moved to **Petition 2001-04.**

(Petition 2001-04 is a temporary amendment to NAC 232 and/or NAC 444A. The proposed temporary regulation prescribes the paper and paper product recycling procedures for state agencies. The temporary regulation provides criteria for exemption from the recycling requirements, provides for clearly labeled containers, establishes reporting criteria by state agencies and requires a building recycling plan to be submitted to the Division of Environmental Protection.)

Mr. Gould: This petition is to adopt procedures as mandated in Nevada Revised Statute 232.007 for recycling by State government. While the previous petition lays the recycling program responsibility on the municipal government, this petition places the responsibility on a specific class of waste generator, that is State agencies to recycle paper and paper products. These two regulations are complimentary in that one provides a collection service while the other ensures that there will be something to collect. On page 1, line 2 of the petition, a requirement is established for each State agency to recycle paper at each of its occupied buildings. The Division recognizes that there are some circumstances under which recycling at State offices is not practical. These circumstances are defined as criteria for exemption from the requirement. At line 12 the regulation states that recyclable containers should be provided for both the building staff and the visiting public. At line 15 the regulation requires each State agency to submit to the Division an agency recycling policy signed by the agency administrator, the name of a designated recycling coordinator, a building list, and a list of any buildings exempt from the requirement pursuant to the criteria noted above. In order to facilitate this submittal the Division has prepared a form complete with the suggested policy statement for submittal. On page 2 of the petition, line 1 the agency is required to prepare and submit the building recycling plan to the Division. The plan must designate a building recycling coordinator, list the items to be recycled, note the collection locations, any special handling requirements, designate someone to remove the materials, designate the means of collection and transportation to a recycling center, describe how employees will be informed of the program, and list any other agencies participating in the building recycling plan. In order to facilitate this submittal, the Division will provide another form to the agency. Line 20 of the petition provides for the agency to periodically review every three years its recycling program and resubmit the forms. Section 2 of the regulation provides a 60-day compliance period. Based on some comments received after submitting this petition, the Division requests to change Section 2 of this regulation, and I believe you had it as an exhibit, for an amendment.

David Cowperthwaite: Exhibit 5.

Mr. Gould: The change in the language to read, "Each State agency shall comply with the provisions to Section 1 of this regulation by July 1, 2002." The general effect of this petition will be to provide State agencies with the framework for setting up recycling programs and for the Division to monitor progress of each agency. It should result in increases in the volume of paper recovery in Nevada's urban areas. Any other questions?

Commissioner Doppe: Actually I have a comment on that. I'm impressed with this, but not in a good manner. Let me say why. Let me contrast the way private industry might do this versus the way I see the public going about doing this. In my office we provide soft drinks to folks and one day somebody said, "You know there's too many cans going into the trash." So they went and

they grabbed a box, an empty paper box, and they stuck it and they wrote "Recycling" in magic marker on there and now that thing fills up with people throw them in there. Next to the copy machine somebody put another box and it said "Recycling" and it fills up with wasted paper and it didn't require a recycling plan and it didn't require a monitor to make sure that people were doing it properly and it's probably about equally as effective as something like this would be and it doesn't cost near as much to implement or create a burden on those people being regulated and it just strikes me as the State should tell each agency, "You know you should make every effort to recycle. Every now and again we're going to check up on you to make sure." And I think that generally speaking in this day and age, that's going to work. I know it works in my office and we didn't even have to twist anybody's arm. So, it just seems to me that this is too heavy in terms of regulation.

Mr. Gould: Well, at the workshops that we held there were some State agency representatives who were concerned about that issue. And we did our best to address that by simplifying the requirements for monitoring and developing a plan. And as I said, we prepared a form and it is not a complex form. It's like a one-page document to identify the buildings so that somebody could assess their program throughout the agency. And another form basically identifies who is responsible at the building, what materials are collected, who collects them. Now, whether you do this voluntarily, and by the way, that is done to a large extent in State agencies right now. As I said, our Division does it, several other agencies do it. However, it's kind of hit and miss and there is not necessarily a public education program or a public information program for the employees there and it's not done necessarily in a systematic way. We would like, as the agency that's also mandated to assist other State agencies with implementing these programs, to be able to monitor it and we have put this together as kind of a template on the basis that if somebody goes through the trouble of filling out this form, which is in essence, the plan, they are going to identify the critical elements for a recycling program at their building.

Commissioner Iverson: Boy it would be nice if all State agencies could do that without any type of program, but again, this has been going on for 20 years and those that do it and those that don't want to do it sometimes have to be coaxed to do it and I don't see any problems in a little paperwork and I think too from your side the opportunity to have something to monitor because one of these days somebody's going to walk up to you and say, "What is the State of Nevada doing to help conserve energy?" If I'm not mistaken, yesterday the Governor put out a conservation program and I think we all have to get behind this thing and a little monitoring is not going to hurt us. Another nice thing that you have in the private sector that we don't get on our side is that you can maybe take some of those dollars that are generated and have an office party or even tell your people, "Boy you're doing a good job. I'm proud of you." And go out and, as a manager, maybe give all of them a \$15 raise a year. Our incentive is, "You're supposed to do it. It's good for the world and we all need to do it." And I think from a Director's side we have an opportunity to say, "We are regulated and we are managed to do it." In many cases that's the only way you're going to get compliance is if people understand that it's a have-to.

Comm. Crawford: How about places like State parks? Is that a facility and so they're going to have to provide for both employees and the public, not one trash bin, but two or three, or four and hope the public recycles and separates and then if they don't the parks are going to have to do it? Is that how this is going to work?

Mr. Gould: Well, we would like to see every agency implement the program to the extent practical at all of its facilities. And, yes State parks would be included in that. However, there are opportunities, or there are criteria for exemption. A facility such as the park up at Sand Harbor has a collection service from, which I believe could also collect the recyclable materials. One of the ones out in one of the rural areas of the State wouldn't have that collection service available and I expect that they would apply, or they would write that facility in for an exemption under one of their criteria for that. We are, probably because of our limited staff, we are not going to be going out and policing all of these things. I guess we see ourselves primarily in an assistance role and kind of an encouragement role to help agencies implement recycling as much as they practically can at these different sites. And

I believe that for instance at Sand Harbor right now there is some recycling going on especially of aluminum.

Comm. Crawforth: Can you tell me why the exemption comes from the chief of the Budget Division and not from DEP?

Mr. Gould: That's in the statute. The statute says that the Budget Division can authorize an exemption if the agency demonstrates that it's not feasible. We also inserted some criteria to facilitate that process recognizing that there's some areas and some facilities where it simply wouldn't be feasible.

Comm. Crawforth: Do you know what the wisdom of that decision was if there was any? Why them instead of you if you're doing the implementing and monitoring of the program?

Mr. Gould: Well, I think that because the Purchasing Division may have something to do with setting up services for collection of the materials and what not and also may have some ability to determine whether or not it's cost effective at a given site. That's my speculation.

Comm. Crawforth: Mr. Chairman I'm very supportive of recycling. I do it personally. All of our agency is, or most of it, where feasible is involved in it. But I have to agree with Commissioner Doppe. It's the right thing to do. And I think an education program would be a much better approach than implementing a program and monitoring it and having the recycling police come by and unfortunately I guess we've been handed an un-funded mandate here by the legislature and I guess we don't have any choice. But I think an educational approach would have been much better than the one we've got here.

Commissioner Coyner: Mr. Chairman Alan Coyner for the record. Les, again help me. I'm an agency that's in a private building. So you're telling me to set up three containers inside my office. Who is responsible for emptying the containers and collecting the materials? The landlord? Or do I have to go out and make sure that happens?

Mr. Gould: The agency is the one who is responsible for that. The agency obviously would want to work through its landlord to determine, to hopefully get the whole building on the program. If the landlord says, "No, you know there's no recycling here. We don't have space for it. We're not going to assist you with that and we're not going to see that the service is provided." That may be a limitation which eliminates that building from participating in the program. And that's one of the ones that's listed in the proposed regulation. Could I comment on the distinction between an educational program and a mandatory, and a monitoring program? We are trying to promote recycling throughout the State and a question that we are often asked, of course, when we are trying to encourage private citizens, businesses and so forth to recycle is what sort of programs does the State of Nevada have in place? Well, we do have a statute and it's been in place for years which requires State agencies to recycle and also to procure recyclable materials. But there hasn't been a systematic implementation of that. We don't really know how effect we are at doing that and in recycling one of the important things is to be able to assess your waste stream, to be able to assess how much material you can collect, and to try to set up a program that is efficient and that will manage that as efficiently as possible. That's part of the reason for the monitoring. The education portion I feel is in here, it's part of it, and it's in the model plan also.

Commissioner Coyner: Alan Coyner for the record. Was there any thought given to a minimum on terms of agency personnel in a building? I mean I'm sure Ag and Wildlife probably has buildings that house one, two, three people in places. Was there any thought given to a minimum?

Mr. Gould: Yes. And we don't intend to see that every single building that has one or two people, you know, has a recycling collection program in place. I think that the intent is for the agency to set up a program that addresses as many of its buildings as is practical.

Commissioner Iverson: I disagree with the discussion that's going on as far as education being the answer to this. Also I want you to know that there was a systematic approach at recycling paper 20 years ago. Every single employee in the State had a recycling box. Every office had a big box to put things in. At that point, we were just coming out of an energy crisis and everybody was told they were going to recycle. It wasn't an "if" and "and." It was every agency was going to recycle. It was part of the State energy conservation plan and part of a plan that David wrote called The Energy Extension Service Plan. It was all a systematic approach. What

happened is as soon as we all got used to the energy crises being over and all went back to our four-wheel drive vehicles that get 16 miles to the gallon, and everything else, the program died off. Whenever you're talking about conservation and energy, the biggest thing that drives people is money, when it starts hitting your pocketbook, and when there's a regulation or a law. We have spent years and years and years and years talking about carpooling. I drive back and forth from Reno every single day in a single car. I see thousands of cars, single passengers, driving back and forth and we put signs up at one time that said, "Please carpool, please carpool." But I think you have to take California's lesson in this. The only way you can get people to carpool is in incentives to put them off on the side of the road and let them go faster. Or some kind of an initiative. I think as State government we're supposed to set an example. We're asking everybody in the State to conserve and to help save power so we don't have brown outs, black outs. And it's just good for the citizens. And I think as a State we should do everything even if it means a mandate. And, in fact, I think it's wonderful that the Budget Director is the one that exempts us. Because if Allen tells me I have to do it, I may and I may not listen. But if Perry Comeaux tells me, "You do it" and I go in for a budget recommendation and he says, "The heck with you. You're not a team player. Why should we play on your team?" I think it's good, in fact if it was up to me I'd let the Governor exempt us. Let's see how good a team players we are. But I think we owe it to our public to be a great example in recycling, energy conservation and all of these things. I notice there's one other gentleman that walked in here, it was 20 years ago, Dean Borgess. All of these things are like de' ja' vu and the way you get it done is through education, but also there has to be a little bit of hammer and that's why we have regulations and monitoring and forms we fill out. I'm done.

Chairman Close:

You know as I think about this, some things seem easier to recycle than others, especially in a building context. Aluminum cans are the easiest I think because that is something that people can put into a can. But, you know when you have to separate cardboard boxes and paper and newspapers from print paper, I don't know how practical that becomes. I was thinking, quite frankly, of my home. You know I've got plastic, paper, and aluminum. And if you're in a park setting I don't know how you possibly could come up with three containers for recycling. I can see people putting there aluminum cans in a special container, but I don't see anybody else separating out there paper products and things of that nature. And you required three recyclable materials to be separated. That's in a previous motion I recall. I know we've already taken care of that, but why do you require that? I mean why can't you just have aluminum cans if that is something that is the most convenient, rather than cardboard, paper and cans?

Mr. Gould:

The statute says all State agencies will recycle paper and paper products. It doesn't say anything about the other materials, although it says the Environmental Commission may establish regulations and procedures for the recycling of other materials also. So right now the burden on State agencies is for paper and paper products. It's not for anything else and the reason, of course, is that government tends to generate a whole lot of waste paper. As I said, 70 percent of the waste stream is waste paper.

Comm. Crawforth:

I wonder if I could ask that the Division annually provide us with a report on status and progress of implementation of both of these regulations?

Mr. Gould:

Sure.

Comm. Crawforth:

I think we need to provide that forum to provide a report on how everybody's doing and etc. I assume you're going to be doing that, making some kind of a report on a regular basis for your own purposes?

Mr. Gould:

Every year we do a report on the status of recycling which is submitted to LCB and I anticipate that this will be a component of that report in the future. So, there will be some assessment of the effectiveness of this public building recycling program and the State government recycling programs.

Chairman Close:

Any other questions?

Commissioner Dahl:

I've got one. Did you say there are some instances where the government would be required to purchase paper?

Mr. Gould:

That's already in statute that State government, the Purchasing director is supposed to be

purchasing paper with recycled content.

Commissioner Dahl: I was curious, what do they do with it if they purchase it under the market price? Do they just store it and wait for the market to go up?

Mr. Gould: Well, what they're purchasing is the product. They're purchasing not the raw material that's going to be recycled. They're purchasing finished product. So, in fact a lot of the paper now that State printing provides and that is purchased through State purchasing is recycled-content paper.

Commissioner Iverson: I have a comment to address that a little bit. One of the things we saw before, and I'm sure it's not happening now because I know the private industry is not interested in making money, but as soon as there was a regulation passed that we had to buy recycled paper, for some unknown reason, and I have no idea why the private sector would do anything like this, recycled paper became more expensive than regular paper. How that happened, and it jumped overnight as soon as there was a regulation adopted. So, I think it is a team approach and it's unfortunate we can only regulate only one side of this, but those things do happen.

Chairman Close: Any other comments? Thank you. Does anyone else wish to testify on this matter? Seeing no testimony we'll call the public meeting to a close. Any comment by the members?

Commissioner Doppe: My objection to this petition has not got anything to do with recycling. It's to do with the issue of well a, in my opinion, heavy-handed piece of regulation take us from 60 percent to 65 percent, or 60 to 70 percent? Does it take that to do it? Or can I not go to a competent agency administrator, such as Mr. Iverson, who is shaking his head "no" and say, "Mr. Iverson for the good of the public and for the good of the State you ought to be recycling. Would you please use your own best judgment to set up such a plan and once a year let us know and if there's anything we could do to help let us know." Is that not a better way to do it rather than to implement a new law a new regulation on people who are already busy and who will now have to periodically pull out this log, dust it off, go step by step, assign somebody, create a coordinator, submit to inspections, and is it worth it to do that to go from 65 to 68 percent efficiency? That's my argument and that's why I'm going to oppose the petition.

Chairman Close: Any further comment? Is there a motion?

Commissioner Iverson: I move that we approve the proposed regulations as written and amended in Exhibit 5.

Commissioner Johnson: I'll second.

Chairman Close: On the motion, all in favor?

Comm. Crawforth: Aye.

Commissioner Iverson: Aye.

Commissioner Johnson: Aye.

Commissioner Gifford: Aye.

Commissioner Dahl: Aye.

Chairman Close: Aye.

Commissioner Ricci: Aye.

Commissioner Doppe: No.

Commissioner Coyner: No.

The motion carried.

Chairman Close moved to **Petition 2001-05.**

(Petition 2001-05 is a temporary amendment to NAC 445B.001 to 445B.395, the state air pollution control permitting program. The proposed temporary regulation amends NAC 445B by creating and defining a new classification of operating permits. The new Class III permit will provide eligible sources (those emitting 5 tons or less of specific pollutants) a streamlined permitting process, which includes accelerated permit review and issuance and lower permitting fees. This regulation will provide regulatory relief for small quantity sources.)

DAG Gray: Mr. Chairman there's something that we need to (inaudible).

Mr. Cowperthwaite: It was a part of the package here and it isn't clear to me in the record whether if in fact the

Model Plan for the Public Building for the recycling program has ever been adopted by the Commission. Does this need to be adopted by the Commission? Be acted upon by the Commission now?

Mr. Gould: Yes it does. The model plan is basically a guidance document for public buildings to establish recycling programs to recycle their materials and it doesn't set up a specific way of it is required for doing that, but what it does do is it provides some background information and suggested framework for implementation. It also refers to existing statutes and proposed regulations for accomplishing that.

Chairman Close: Les is this something that should be adopted or is this just your model plan that you're going to use for your in-house purposes?

Mr. Gould: It does say, the statute does say that the . . .

Commissioner Johnson: Mr. Chairman?

Chairman Close: Yes?

Commissioner Johnson: I don't believe that the model plan was noticed. It's not on the agenda. I mean we could, what, accept it as an exhibit.

Mr. Cowperthwaite: The model plan is under 2001-03 proposed temporary regulations that public buildings come into the standard, the model plan (inaudible).

Commissioner Johnson: Oh, okay. My error. I was looking for . . .

Mr. Cowperthwaite: It was missed in the process.

Commissioner Johnson: Oh, okay. This is what you were trying, so we need to reopen the 03? I would move that we rescind our action on Petition 2001-03.

Chairman Close: Is there a second?

Commissioner Doppe: I'll second it.

Chairman Close: On the motion, all in favor?

The motion carried unanimously.

Chairman Close: **Petition 2001-03.**

Mr. Gould: As I said, the model plan is a guidance document for municipal governments for public building owners and for State agencies to implement public building recycling. And it describes the statutes, it describes the proposed regulations and so forth for accomplishing that and make some suggestions and get guidance about how to do that.

Chairman Close: Well, Les, isn't this something that you can put out yourself without having us adopt it? If we adopt it, and you want to change one word, then we've got to come back and do the whole thing all over again. It just seems to me this is something that you can promote and publicize and hand out and you can modify it as appropriate, but whether or not we have to adopt this as we would adopt as part of a regulation, it seems maybe not a wise idea because then that's going to stop you from ever modifying it without coming back to us again.

Mr. Gould: Well I believe that we could do it that way. I agree that that seems to be the most reasonable way of doing it. My reading of the statute was that it should be adopted by the Commission. But there is the potential, of course, that during the next year when we're implementing this program that we may want to make modifications to the plan.

Chairman Close: This seems like an informational document . . .

Mr. Gould: It is.

Chairman Close: . . . that you hand out to whomever and I think it has a good goal, but whether or not it should be adopted by the Commission, which casts it in stone, I don't know if that's the right way of going.

Commissioner Iverson: Could we adopt the, and I agree 100 percent with you, I think this is just, I don't think the Commission should adopt a model, because a model is basically saying this is an idea you should follow. It's not saying that this is a plan that you have to follow. I think we ought to go ahead and adopt the regulations as they're stated or the way we had our recommendation and if nothing else put a seal of approval or a support on the model plan, but this shouldn't be part of your regulation. If he tells us, if the regulations tell us to recycle and this is what you have to recycle and this is what you have to do, then as a building administrator or a director, like Allen or any of us, it's up to us to make sure it's done and not to specifically follow a plan that was developed, I mean we should have that flexibility. So, I agree with the Chairman. We should just adopt the regulations and support your plan.

Chairman Close: If we're going to support, not adopt, but maybe indicate a level of support, you probably ought to review this with us a little bit because we are adopting or at least supporting something that we haven't really looked at so far as the Committee is concerned. Maybe just walk us through it quickly then we can go forward.

Commissioner Gifford: Mr. Chairman I would just wonder as a Commission whether we need to have that detail.

Chairman Close: If we're not going to adopt it, I don't think we have, but if we're going to give our approval to it as we are putting something in our minutes that say we approve this model plan, it seems to me there ought to be as part of our notice of public hearing, I'm reluctant just to adopt it without having looked at it.

Commissioner Gifford: At this point, just because it's noticed doesn't mean that we have to act on it.

Chairman Close: That's true.

Commissioner Gifford: This could be easily tied with guidelines for example.

Chairman Close: We don't have to act on it. That's exactly right.

Mr. Gould: I think that from our point of view we don't require that it be acted on by the Commission.

Chairman Close: So let's go back and vote again then on 2001-03 without the inclusion of the model plan.

Commissioner Doppe: I would make a motion to approve Petition 2001-03 as amended in your amendment that was shown in Exhibit 6. The same as my original motion.

Commissioner Johnson: And I'll second it.

The motion carried unanimously.

Chairman Close moved to **Petition 2000-12.**

(Petition 2000-12 (LCB R-117-00) is a permanent amendment to NAC 445B.001 to 445B.395, the air pollution control regulations. Amended is NAC 445B.194, which limits the criteria for temporary sources. NAC 445B.287 redefines the requirement when an operating permit or permit to construct is required. NAC 445B.288 redefines insignificant activities. NAC 445B.290 requires new stationary Class I sources to submit an application. NAC 445B.295 redefines the requirements for compliance plans. NAC 445B.316 amends the description of emissions trading to be modified to ensure consistency with 40 CFR Part 70 and provides conditions governing a permit shield. And, finally, NAC 445B.331 is amended for change of location fees for Class I and II sources requiring 10 days advanced notice.)

Mike Elges: Good morning Mr. Chairman, members of the Commission. My name is Mike Elges. I'm representing the Division of Environmental Protection, Bureau of Air Quality. On January 11, 1996 the Division was granted interim approval by U.S. EPA for implementation of the State's Part 70 Title V operating permit program. Interim approval status was granted rather than full approval because of regulation deficiencies identified by U.S. EPA. Because of these noted deficiencies it is necessary for the Division to submit a revised Title V operating permit package to EPA by June 1 of this year in order to obtain full Title V program approval. This submittal must include a revised version of NAC 445B which addresses all deficiencies noted by EPA. Failure to do so will require EPA to implement the sanctions provisions of the Clean Air Act against the State of Nevada. I'm here today to present proposed revisions to NAC 445B which address the degrees of deficiencies noted by EPA.

There are essentially two primary areas of concern in the proposed regulations which need to be revised to ensure that there are consistent federal provisions. The first are of concern relate to specific inconsistencies in the current rule and require a change to the provisions to be consistent with the federal regulations. NAC 445B.295 is being revised with respect to the contents of compliance plans. NAC 445B.316 is being revised with respect to allowances for emissions tradings and NAC 445B.289 and 290 are being revised to clarify the requirements for when a Class I application is required to be submitted. Again, these technical changes are to insure consistency with the federal requirements and do not introduce any additional burden on the regulated community and we have received no comment about these provisions. The second area

involves two other regulation changes which will have a more direct impact on regulated sources. These changes are proposed in NAC 445B.288 which describes the insignificant activities and NAC 445B.187 which is the definition of a stationary source. NAC 445B.288 is being revised to identify activities that are exempt from the permitting requirements as well as to identify those activities which are to be treated as insignificant activities. NAC 445B.187 is being revised to clarify what constitutes a stationary source or what makes up a stationary source. The Division public noticed and held workshops for the proposed regulation revisions in late September and early October of the year 2000. The workshops were held in Las Vegas, in Elko, and here in Reno. The Division received substantial comments from the agricultural and the mining industry related to the regulation changes that we are proposing today. The primary concern of the agricultural and the mining industry were the revisions proposed which would remove specific categories of exemptions and insignificant activities in NAC 445B.288. The Division continued to work closely over the last eight months with the industry to address all concerns while still considering EPA's deficiencies and the issues that they've noted along the way.

In doing so, the Division has been able to leave many of the categories of insignificant activities in the rule, but we've had to go beyond and clarify in more specific detail regulations specifications that better qualify in those categories. But, again, we weren't holistically removing them from the regulations all together.

Because there's been so much confusion regarding how insignificant activities are to be treated under the proposed revisions, I wanted to make sure that I clarified for the record today that EPA allows the states to develop lists of insignificant activities for Part 70 programs as the Division has proposed in the 288 revisions today. Identifying insignificant activities through the listings in the rules is intended to minimize paperwork for requiring the sources to provide only a limited amount of information related to the insignificant activities. Both Class I and Class II sources that have insignificant activities listed in the proposed rule may take advantage of the reduced permitting burdens consistent with EPA's Part 70 regulations. Again, this is really structured to help speed up the process more than it is to bog it down with specifics for activities that just don't carry that much concern. In April of 2000 the Division once again public noticed and conducted another round of workshops in order to explain the revisions made to NAC 445B.288 and to solicit any additional comment. While no negative comments were received from the workshops, the Division was provided comment by the Department of Defense in early May regarding the proposed revisions to the stationary source definition contained in NAC 445B.187. Following review of the concerns raised by the Department of Defense the Division agreed to further amend the proposed regulations. Since this information has not recently been provided to the Division, the proposal is not included in the packet that you have today. The Division would like to introduce the following exhibit if we could David which contains the revised language which the Division believes will address the DOD's concerns.

Mr. Cowperthwaite:
Mr. Elges:
Mr. Cowperthwaite:
Mr. Elges:

That is Exhibit 8.

Exhibit 8?

Yes.

In Section 5 of that exhibit the Division is proposing to revise subsection 3 to include non-road engines and non-road vehicles so that the stationary source definition will clearly exclude these units from the stationary source definition. The Division believes that this will resolve the concerns raised by the Department of Defense and will not interfere with EPA's approval process.

Also, the Division has not been able to work as closely with the Legislative Counsel Bureau as we would have hoped because of the current legislative session and for this reason we would like to request the Commission to consider a couple of other technical changes as well. In that same exhibit, in section 8, the Division is requesting that the third sentence in subsection 2(h) of 445B.288 be removed entirely. This language tends to conflict with the

balance of the provision and it was not something that I believe we expected to see in this proposed package. So we would ask that that language be removed today.

The last proposed amendment to the proposed revisions is contained in Section 12. Again, the Division requests that the term “pursuant” be added to the second sentence near the end of the provision. This was inadvertently left out we believe by LCB.

I’m sorry. Back under Section 8 I’ve missed another clarification that we also would like revise today if we can. Subsection 3 of 445B.288 the words “declared as” we would like to replace those with the word “consider.” Again, this was language that was language that was changed by LCB and we’re not convinced that that’s really what the intent there is and would like to ask the Commission to consider changing that verbiage as well.

The other portion of this package that was not specifically tied to EPA’s deficiency requirements deals with revisions that we’re proposing today to NAC 445B.290. The Division has looked very closely at ways to try to streamline permitting of power generation sources and the provisions as they’re established today would require any new power generation sources to go through our Title V or Part 70 permitting process immediately. Essentially this means that there’s roughly a 12-month window for permitting of these facilities. We’re asking today to revise 290 to allow these sources to come in if they are eligible and seek minor source permits which would streamline and speed up the permitting process. We believe this will certainly help expedite permitting of new power generation sources within the State and allow these facilities to commence construction and operation while still fulfilling the obligations that we have under the Part 70 provisions. And, again, this has been discussed pretty heavily with EPA and they do not seem to have any concerns at this point that this is not a doable approach.

With that, adoption of these regulations as proposed will correct all deficiencies noted by EPA and allow for final approval of our Part 70 program. I haven’t gone through a line-by-line walk through of these provisions and could certainly do so if anybody would like to do that. But with that, I’d be happy to answer any questions I possibly can regarding this proposed package.

Chairman Close:
Comm. Crawford:

Any questions?
Some of the activities that are exempted we’re requiring people to keep a log. How will they know that they have to keep a log if they don’t have to have a permit?

Mr. Elges:

A lot of the confusion that worked into structuring 288 in the revisions that are carried there. There’s a distinction that has to be made between what is exempt and what is an insignificant activity. The first subsection of 288 outright exempts sources. These are specific processes or industry-types that are not required to obtain a permit at all. Those exempted facilities or sources are not in the arena to begin with so they’re not, they don’t even have to worry about insignificant activities or have to keep logs as you progress through that regulation. Any other sources that would be required to get a permit can be eligible to list insignificant activities which is essentially the balance of 288. In doing so, they will have a permit and the information will be provided through the permit clarifying that they are required to keep records on site if they are going to exercise any of the insignificant activities provided under this regulation.

Comm. Crawford:
Mr. Elges:
Commissioner Iverson:

So everybody who is required to keep the log is going to have to have a permit.
That’s correct.
I know with the Mining Association they have an organized environmental committee that probably worked with you on these (inaudible). With the agricultural industry we’ve had the environmental action committee that had some concerns and there were some concerns voiced by some of the folks out in the field. You indicated that you had met with them and primarily worked out all of the differences and then you went back to workshop. When you went back to workshop, basically, were those folks that were involved with this and had concerns, did you get those problems resolved?

Mr. Elges: Yes we did. We remain very active actually with all parties throughout this revision process and in part that's why it took so long to be able to present it to the Commission today. Along the way we had to balance obviously EPA's concerns and industry's concerns and in doing so we continued to update all interest parties with revised language. Right up literally until yesterday afternoon.

Commissioner Iverson: Well I know when this first came out there was a tremendous interest and I haven't heard a word for three months so I'm assuming that you worked out all of those differences.

Mr. Elges: We're excited to be at this point, again, because we spent so much time working on these revisions and we believe that we have addressed all concerns.

Chairman Close: I have a question on your amendment. The language is kind of confusing to me. Maybe you can explain it to me. On Section 8 beneath the take out it reads, "An emergency generator that is owned or operated by a Class II source and has potential to emit is calculated on the basis of less than 500 hours of operation does not qualify as an insignificant activity." What if it's use was one hour? Would it still not be an insignificant activity?

Mr. Elges: That would be correct.

Chairman Close: Why don't we just say then that an emergency generator that is owned or operated by a Class II source, why go on with less than 500 hours if 1 hour is not an insignificant source?

Mr. Elges: The intricacy here starts when a source has to calculate emissions to determine whether they're subject to Title V applicability or not. The EPA has provided guidance that says it's reasonable to use a 500-hour benchmark for establishing those calculations. We have many facilities that we regulate that if they relied on that 500-hour benchmark that would not give their calculated or potential emission levels. It would not get them below the Title V threshold. So many of those sources have come to us and said, "We would like to have the ability to seek limitation through the permitting process for hours of operation on our emergency generators such that we can get our potential to emit down below the Title V threshold." If we had crafted the language in this provision any differently we would not be able to afford them the opportunity to come forward and seek limitation to lower those hours and to subsequently lower the potential to emit that goes along with that.

Chairman Close: And so if I have a generator then it's calculated on the basis of 10 hours it is still not an insignificant source?

Mr. Elges: That's correct Mr. Chairman. It would have to be pulled into the permit, a limitation would have to be place for that 10 hours and then the calculated potential to emit based on that 10 hours would go into the emissions inventory and effectively be able to keep the source out of Title V.

Chairman Close: Any other questions?

Commissioner Ricci: Are these going to be acceptable to the EPA?

Mr. Elges: All indications that we have from the EPA is that this package will be acceptable, yes. We've worked very closely with them to ensure that we would be able to bring them a package that they would grant approval on.

Commissioner Johnson: I simply need for you to go through your proposed amendments again. I'm uncertain exactly what is and what is not in the bill. Could you go through those more or less line-by-line?

Mr. Elges: You want to just walk through the amendments themselves?

Commissioner Johnson: Yes.

Mr. Elges: Okay. Section 5 445B.187.

Commissioner Johnson: Could you refer maybe to the pages that we're on in here? I don't necessarily open the document to where you're talking to.

Chairman Close: Page 2, line 4?

Mr. Elges: I believe we start on page 2. I'm sorry I believe that in the packet that you have it's on page 1 line 10 section 5 is the beginning of 445B.187. We're proposing to modify subsection 3 which is on page 2, line 4. That subsection is proposed to read, "The term does not include motor vehicles, special mobile equipment, non-road engines or non-road vehicles. As used in this subsection, non-road engine and non-road vehicle have the meaning ascribed to them in 40 CFR 89.2 as that section existed on December 31, 1997.

Commissioner Johnson: Explain to me how the non-road engine would correlate to the emergency generators that you've covered in another section.

Mr. Elges: These are two separate issues. This revision is primarily a result of our discussions that we've had with the Department of Defense over the last few days. There is concern that the Clean Air Act amendment definition of stationary source contains, I'm sorry, excludes non-road engines and non-road vehicles from the definition of a stationary source. It basically does not let the Division regulate these types of activities. Our proposed stationary source definition did not include these exclusions. And, so, today we're proposing to bring them into the scope so that it is clear and that we're not trying to deviate from the federal definition of stationary source. This again, it does not relate to emergency generators or insignificant activities and I'm sorry if I've confused you, but they're two really separate issues.

Commissioner Johnson: I was just concerned that including one definition here and that there would be a conflict.

Mr. Elges: There should not be. We've looked at it pretty closely and this should not upset any of the other changes that we've proposed. Did you want to walk through the other changes as well?

Commissioner Johnson: Yes.

Mr. Elges: Okay. Section 8 is on page 3, line 14 and we are proposing to amend subsection 2(h).

Mr. Cowperthwaite: Exhibit 7.

Mr. Elges: We're asking the Commission to strike the sentence that reads, "The potential to emit of an emergency generator must be calculated based on 500 hours of operation per calendar year."

Commissioner Johnson: The rationale for that is that you've previously . . .

Mr. Elges: Right. We believe it conflicts with the balance of the rule. And, again, this is just some verbiage that we got back from LCB that we're having a little difficulty agreeing upon. And then in subsection 3 of that same part we're asking the Commission in the first sentence there to remove the words "declared as" and replace them with the word "considered." Because, again, we don't believe that there's a declaration that needs to be made. We just believe it's a consideration. And then in section 12 which is page 16, I believe we're at the end of Section 12 there's a flush portion of the rule.

Commissioner Johnson: Okay and that would be in page 19?

Mr. Elges: Page 19, line 21. The last sentence there, "A permanent shield authorized pursuant to this subsection" we're asking to insert the word "pursuant." The version that you have does not have that in there now.

Chairman Close: Any other questions? Thank you. I have two individuals who would like to speak on this matter. Captain Rogers?

Captain Rogers: Good morning Mr. Chairman and members of the Commission. In light of Mr. Elges' comments and proposed revisions, I'm going to be extremely brief because I think we're all in the same sheet of music here. I'm Captain David Roy Rogers, Commanding Officer, Naval Air Station, Fallon. I'm here to address some serious military readiness issues that may result from the un-revised version of Petition 2000-12. As most of you know, Naval Air Station Fallon has been in operation since 1942 and has evolved into the Navy's primary graduate level aviation training facility. The Naval Strike and Air Warfare Center (inaudible) activity on the base trains over 55,000 military personnel a year including all of our carrier air wings. Nine of the last ten air wings in the last two years to train at Fallon have ended up in combat operations within the last four months of their leaving Fallon. Today I'm here on behalf of Rear Admiral Rick Ruehe who is my real boss down in southwest region in San Diego who represents all the military services in the State of Nevada for environmental matters as the DOD regional environmental coordinator. Rear Admiral Ruehe has submitted detailed comments on this matter by letter to Mr. Allen Biaggi dated 4 May 2001 and I believe Mr. Elges's proposed modifications were based on those comments. That's what he was referring to.

I will summarize the operational impact. Some specific things that were in that letter and Miss Mary Kay Faryan, Environmental counsel for Rear Admiral Ruehe will summarize some of the legal issues. We will then both be available to answer any questions you may

have. The specific issue I want to address is tactical support equipment, also called ground support equipment. I draw your attention to the photographs of this equipment found in Enclosure 1 of the exhibit, which David is passing out there. The function of this equipment is motorized ground support gear which is essential to the air operations conducted at NAS Fallon. They are the color photographs you'll find in there as you page through. We're talking about aircraft tow tractors, ground power units, aircraft start units, cargo loaders, and generators. TSE or GSE is portable and routinely deployed to various locations throughout the United States and the world with squadrons from both NAS Fallon and Nellis Air Force Base. TSE engine size ranges from 8-horse power to 215-horse power. At Fallon we have a total of 128 pieces of various types of equipment that support our combat aircraft. I don't have the Nellis numbers for you, but they're probably double those. Any regulations which would require DOD to track specific air emissions from this type of equipment would be a tremendous administrative hardship. This is because GSE or TSE routinely moves from base to base and onto aircraft carriers with air wings. With the large numbers of squadrons rotating through NAS Fallon annually on training operations, record keeping would be virtually impossible without increases in manpower, which we can ill-afford.

Second, military specifications prohibit altering or modifying TSE in order to maintain consistency of the fleet throughout the world. As you can imagine, an airman in Nevada needs to be able to repair and operate the same piece of equipment as an airman in South Korea. So, it's kind of a universal standard DOD has. Therefore, again, from a regulatory perspective the military could not comply with any control technology imposed on TSE or GSE. Lastly, the State of Nevada regulating this equipment as a part of the military stationary source would cause adverse national precedent. We are in complete concurrence with Mr. Elges's latest revisions which he briefed you on and at this point I'd like to turn it over to Miss Faryan for a bit of legalese and then I'll entertain questions.

Chairman Close:
Mary Kay Faryan:

Any questions?

Good morning Chair, Commission. My name is Mary Kay Faryan. I'm environmental counsel to Rear Admiral Ruehe, the DOD regional environmental coordinator. First, I'd like to thank your staff, particularly Mr. Elges who worked cooperatively and gave this matter attention in the last couple of weeks and I'd like to address some of the legal issues impacting military readiness that may result from Petition 2000-12. In summary, there's clear statutory and regulatory authority to exclude all military tactical support equipment and ground support equipment from the military installation stationary source permits. Because these equipment are mobile sources regulated under the non-road engine rule (inaudible) stationary sources. It's instructed that the DOD has engaged in a number of other jurisdictions on this very same issue and at least nine additional jurisdictions have specifically exempted all TSE GSE from stationary source permits from the State of Washington to Arizona, California, etc. It's all in your written package as well as EPA Region IV and III. Conversation with your staff yesterday, confirmed by Mr. Elges's presentation today makes it clear that the State is in agreement with this position. We urge you to accept staff's proposal to include non-road engines in its list of exemptions from the definition of stationary source. Nevada Administrative Code 455B.187 subsection 3, this is consistent with our written comments and we are appreciative of your staff's hard work on this. We have one implementation issue I'd like to address for the record that may exist and that's with respect to turbine tactical support equipment. As seen in our written submittal, federal law enables all states to regulate all new non-road engines consistent with the State of California. California's program defines military tactical support equipment to specifically include turbine engines. Turbine engines are simply a subsection of internal combustion engines. California also exempted all registered tactical support equipment from emission controls or limitations including inclusion in Title V or new source review applicability determinations. We addressed this issue specifically recently with the State of Arizona and there is correspondence in your packet where they were in agreement with the DOD's position.

As reflected in our comments written on this rule, the Federal Clean Air Act provides the State of Nevada can regulate to the extent that California has. It is DOD's position that Nevada would need to promulgate regulations to govern military TSE for both internal combustion engines and turbine if it intended to regulate this equipment in any capacity. Again, we thank you for your attention to this matter.

Chairman Close: Any questions? Does anyone else wish to testify on this matter? We'll call the public meeting closed. Is there any comment by the committee?

Comm. Crawford: Mr. Chairman I have a question. On section 8 of the proposed amendment there was some language evidently were not necessarily in agreement with the Legislative Counsel Bureau. "Consider" versus . . .

Mr. Elges: Mike Elges for the Division. I wouldn't say that we're not in agreement with LCB on the language. It's more of a preference of how it should be written. The term "declaration" to us is of concern. It seems to imply that there needs to be more than the intent that we want to see in the rule. We would rather see the term "consider" or "consideration" be placed there and we feel that's something that we can negotiate with LCB and it was just one of those things that kind of came out in the rule before we were able to get ahead of it and present it as part of your package today.

Comm. Crawford: It's a policy-content issue for you that it be considered rather than . . .

Mr. Elges: That's correct.

Commissioner Johnson: The question about the approval of power plants. Can you expand on that a little bit for me why you are by definition classing a power plant at a lower requirement and then later considering them for another status?

Mr. Elges: Sure. The Part 70 program in Nevada is pretty unique from the perspective of we have an integrated procedure. We have sources submit applications and get an operating permit rather than what is typical of other jurisdictional areas where an applicant would come in and receive a construction permit and then come back and get an operating permit. Our program has been structured from the get-go to be a one-stop permitting process. With that uniqueness there has come some difficulties in transitioning from the Federal Part 70 program provisions which we believe were very much geared for a two-part permitting process to a single-permit program. In doing so, our current regulations, in order to ensure that power generation sources, which are termed "affected sources" obtain Title V permits. Our provisions were written to say that they have to go directly to the Title V or Part 70 program right now. Other jurisdictions allow them to go through a construction permit process first which doesn't force them into the Title V arena right off the bat. What we're trying to do today is back up a little bit through subtle revisions in these rules and afford that opportunity to those same facilities to allow them to effectively be able to come in, obtain a minor source permit, allow them to construct and commence operation and then transition into the Title V realm and go into full capacity of those plants. So it's intended to just try to free things up a little bit on the front end for getting permits in the process and trying to get these projects started.

Commissioner Johnson: And will the present proposed legislation to expedite the process have any effect on this regulation or are you integrating, the assumption that it passes, into this petition?

Mr. Elges: I'm not sure that I'm . . .

Mr. Biaggi: Mr. Chairman, Commission members, my name is Allen Biaggi. I am the administrator for the Division of Environmental Protection. Mr. Johnson I think you're referring to SB 642? 362, okay. And that is intended to attempt streamline the power permitting process. We have been working with Senator Titus and others in addressing the air quality concerns because air quality is a little bit of a unique situation and sometimes the timelines for permitting these facilities can be somewhat lengthy. So, we are attempting to integrate the permitting timelines for air quality into that piece of legislation and believe me, we want to streamline these things as much as possible without compromising public health issues. So, we're working with them to integrate it in.

Commissioner Johnson: Would we expect to see a revision of this particular portion of the regulation if that bill passes in its present form?

Mr. Biaggi: Commissioner Johnson probably not. We're attempting to make sure that the legislation is

crafted to address these requirements rather than the other way around.

Commissioner Johnson: Thank you.

Chairman Close: Any other questions? Any further comment from the audience? Hearing none we'll declare the public hearing closed. Any comment by the Commission members? Is there a motion?

Commissioner Doppe: Mr. Chairman I'll move to approve Petition 2000-12 as amended.

Comm. Crawford: Second.

The motion carried unanimously.

Chairman Close moved to **Petition 2001-05.**

(Petition 2001-05 is a temporary amendment to NAC 445B.001 to 445B.395, the state air pollution control permitting program. The proposed temporary regulation amends NAC 445B by creating and defining a new classification of operating permits. The new Class III permit will provide eligible sources (those emitting 5 tons or less of specific pollutants) a streamlined permitting process, which includes accelerated permit review and issuance and lower permitting fees. This regulation will provide regulatory relief for small quantity sources.)

Mr. Elges: Mr. Chairman, members of the Commission again Mike Elges for the Division of Environmental Protection, Bureau of Air Quality. At an SEC hearing in September of 1999 the Division proposed fee increases for our air quality program. The most substantial issue raised during the hearing was in regard to the economic hardship presented by the Walker River Construction Company and other similar small businesses regarding the proposed fee for applications and for air quality permits. The fee structure proposed was adopted at that hearing with specific instructions to the Division to further consider the concerns and to return to the Commission with recommendations for appropriate amendments to the rules. Today the Division is proposing to streamline the permitting process and reduce the economic burden associated with the permit fees for smaller sources. The Division is proposing to amend the permitting regulations in NAC 445B to establish a third permit class for small sources of air pollution. The Class III program will provide a permitting process for sources which are subject to the permitting regulations, but that emit or have the potential to emit 5 tons per year or less of PM 10, NOX, SO₂, CO and VOC's. Emissions can be of any one or a combination of these pollutants. Additionally, any emissions of lead must be less than 1,000 lbs per year. A Class III source cannot be a temporary source as defined in NAC 445B.194. It cannot be located at or be part of another stationary source or required to obtain an operating permit under the dust regulations in NAC 445B.365. A Class III source cannot be subject to the requirements of Title V of the Clean Air Act, a new source performance standard under 40 CFR Part 60, or a national emissions standard of hazardous air pollutants under 40 CFR Part 61. The three primary advantages of this proposed Class III program are in the time required to review and issue a permit, the environmental evaluation for these facilities, and the facilities associated with the application and permit, I'm sorry, and the costs associated with the application and the permit. The costs being the big issue here today. Under the proposed regulations the Division will have 10 days to determine if a Class III permit application is complete and 30 days to issue or deny a new Class III permit. This is roughly half the time currently provided for the Class II permits. Any revision to the Class III permit would follow the same time frame as that for a new Class III permit, 10 days for review of completeness and 30 days for issuance or denial. The application process will not require an environmental evaluation from the source. The Division has conducted an environmental evaluation which is intended to consider the worst-case emission impacts from the sources eligible for the Class III program. So we've done the work for them in the environmental evaluation department. The evaluation conducted demonstrates that the proposed 5-ton per year upper bound threshold for Class III sources will not have a negative impact on Nevada ambient air quality standards. Being able to rely on this worst-case evaluation will reduce the workload and cost requirements for both the applicant and for the Division.

Finally, the permitting fees are proposed to be reduced for the Class III sources. I'd like to

provide for your review a fee comparison table that we've put together, if David would be so kind as to make that available as an appendix.

Chairman Close:

Mr. Elges:

Item No. 7?

From this table what we've tried to do here is show you clearly what the differences are going to be for the proposed Class III application and annual emission fees when compared to those of the current Class II application and annual emission fees. Essentially, a new Class III operating permit will be \$300. Any revision of that Class III operating permit would be \$200. Renewal of a Class III operating permit, \$250. The annual maintenance fee will be \$250 and we're not going to charge an annual emission fee. We believe it's just too cumbersome to try to look at these sources because of their low emissions and try to quantify some emission values. It's very labor intensive for us to do that so we've elected to try to get away from that here. When comparing those fees to the Class II permits you can see they're substantially different. A new Class II operating permit is \$3,000. Revision to the Class II operating permit is \$2,000 and so on down the line. So, again, we're looking at a very substantial cost savings for these smaller sources coupled with a faster permit review process.

The Division currently estimates that there are roughly 70 permitted Class II sources which will qualify for the Class III program and will be phasing those sources into the Class III program as their permits expire. The Division public noticed and conducted workshops regarding the proposed Class III revisions in December of 2000. Workshops were held in Las Vegas, Elko and here in Reno. Comments received at the workshops were all in support of the program. We received no negative comments. We would have liked to have brought this package in front of the Commission earlier, but we were concerned that there was overlapping issues or language that may have affected the Part 70 regulations that we previously went over. So we've held this package back until we ironed those issues out and, again, wanted to bring that in today on the heels of the Part 70 provisions as well. Given that, I'd be happy to answer any questions that any of you may have on the proposed revisions.

Chairman Close:

Commissioner Johnson:

Mr. Elges:

Any questions?

Rationale for excluding carbon monoxide on the annual emission fees?

Carbon monoxide is currently excluded in our current provisions as it stands today. It's a cumbersome pollutant to get your hands around, first of all, and most sources emit quite a bit of it. So, to keep a balance in our structure we've elected to opt that out.

Chairman Close:

Commissioner Coyner:

Any other questions?

It represents a decrease in revenue to the Division then overall. Is there some other offset that you're going to do to increase revenue somewhere to cover that? Or is it just going to be a decrease in revenue (inaudible).

Mr. Elges:

Certainly Commissioner. We looked at the potential for offset when we went through this process. Our worst-case estimates are somewhere about \$35,000 that we feel we would lose in revenue from making this change. Given the other budget changes that we have we feel very comfortable that there are significant offsets and savings in our budgets to compensate for that kind of change.

Chairman Close:

Mr. Elges:

Chairman Close:

Any other comment? Thank you very much.

Thank you.

Any comment from the public? Hearing none I'll declare the public hearing closed. Any discussion among the Commission members? Is there a motion?

Commissioner Doppe:

Mr. Chairman I think before a motion, I commend the Division. I think it's a good responsible action and doesn't do anything to degrade environmental quality in the State and it helps out business and therefore the public at the same time. So, it's a good idea. I make a motion to adopt Petition 2001-05.

Chairman Close:

Commissioner Dahl:

Commissioner Coyner:

Is there a second?

I'll second.

You said 70 Class II's would leave and if they're currently paying \$2,000 on their renewal and their new renewal would be \$250, that's about a \$1,800 differential times

70, I did fast math, so check me here, I get about \$125,000, not \$35,000.

Mr. Elges: Again, Mike Elges for the Division. When we looked at this transition we did not look at it as a straight, sources would come in today and give up their existing Class II permits and transition over immediately to the Class III program. We viewed it from the perspective that we would transition into those changes over a five-year term of a permit. So, it's not a straight relation to revenue from that perspective.

Chairman Close: Any further comment? On the motion, all in favor?

The motion carried unanimously.

Chairman Close moved to **Petition 2001-07.**

(Petition 2001-07 is a temporary amendment to NAC 445A.810 to 445A.925, the underground injection control (UIC) program. The proposed amendment provides that "other Sensitive Groundwater Areas" can be determined to meet compliance with the proposed regulations. The regulations revise outdated Nevada Revised Statute references, the expansion of minor permit modification criteria and logistics, the expansion of temporary permit criteria, methods to establish permit limits in the absence of specific standards, and the prohibition on treated effluent is to be repealed. New definitions for cesspool, Class V Rule, delineation, drywell, groundwater protection area, improved sinkhole, other sensitive groundwater area, motor vehicle waste disposal well, point of injection, sanitary waste, septic system, source water assessment and protection program, subsurface fluid distribution system, are proposed amendments. Restrictions are imposed on Motor Vehicle Waste Disposal wells. Fees for renewals in NAC 445A.872 are reduced, repealed and incorporated into the existing annual fee. This fee category is expanded to included major modifications.)

Val King: Good morning Mr. Chairman, members of the Commission. My name is Val King and I work for the Division of Environmental Protection. I work in the underground injection control program, or the UIC program, and this is within the Bureau of Water Pollution Control. For those of you who aren't familiar with what UIC is, it's basically just the regulation of any kind of fluids into a well and examples of these types of wells that we permit in our program are: recharge wells when we're injecting potable water into the aquifer; we've got geothermal wells; we've got remediation wells when we're looking at environmental cleanup. And the purpose of our UIC program is strictly just to protect underground sources of drinking water from degradation due to injection activities. Now the reason why I'm here before you today is because Nevada has primacy over our UIC program and what that means is that we have the authority to enforce the program at the State level as opposed to EPA enforcing it. But to maintain primacy we have to ensure that our regulations are just as stringent as what the federal regulations are and recently EPA promulgated some new provisions that have changed their program and, consequently, we have to pull those provisions over into our program and update them that way. And, also, since our regulations haven't been modified since 1987 when they were actually first approved, what we want to do is just some general housekeeping, we've got, you can imagine, some things to clean up. We've got outdated statute and regulation references that are incorrect that we need to fix. We also want to provide clarification to our program to the regulation that actually more clearly represent and reflect the program's activities that we're doing today and also we want to propose to lower our permit renewal fees. So, if it's acceptable to the Commission what I'd like to propose is just to be brief and try to hit on just the highlights of what the issues are and the more notable modifications that we're proposing. Is that acceptable to go that route?

Okay, thank you. What happened is EPA recently promulgated some new provisions to the UIC program. And specifically what that was was it's identified as the Class V Rule. The Class V Rule, it adds quite a few new definitions, but specifically, or I guess more specifically it addresses cesspools and motor vehicle waste disposal wells. Now cesspools have been banned in Nevada for many years now, so our focus is primarily on the motor vehicle waste disposal wells. What a motor vehicle waste disposal is, it's a shallow well. It could be as simple as a floor drain in an auto repair shop that just dead-

ends in the ground and the reason why it's a problem is because it's a direct conduit to the groundwater for whatever the well owner is choosing to put in there, be it solvents, motor oil, gasoline. Whatever it is. That's why these things are a problem. That's why EPA has brought them to the forefront. And, so, but prior to them promulgating this rule, Nevada took the position of actually initiating a Class V injection well inventory on our own. And so we're canvassing the State of Nevada and currently we have all but two counties; those being Washoe and Clark County included in our inventory. And it's looking like there aren't all that many. I mean we're looking at less than 30 motor vehicle wells at this time. So, in general the Class V Rule makes good enough sense for Nevada all with the exception of the other sensitive groundwater areas issue that EPA has mandated and I think it's really important to bring to your attention that these other sensitive groundwater areas, or we call them OSGWA's they weren't actually in the proposed rule where the states have a chance to comment upon the rule. It just came out in the final rule. So, Nevada and all of the other states in the country completely missed out on the opportunity to comment on this and it truly is the only part of the rule that doesn't work well in Nevada.

What OSGWA's are, are they're areas that each state is responsible for identifying and they over-lie a vulnerable water source and it's up to the states to decide what and where. The reason why it doesn't make sense for Nevada is that if a facility is determined to be in an OSGWA, then that facility has to meet drinking water standards at the point of injection and this isn't always practical in Nevada for the simple case that as we're all aware, there's areas in the State that have contaminants such as arsenic that just naturally are higher than what the drinking water standards are. And so what this means is that if a facility is located in an OSGWA even if the arsenic is at a concentration greater than what the drinking water standard is if a well owner pumped that water he or she would then be responsible for treating that arsenic to drinking water standards before they put it back into the ground. So, because of this what Nevada wanted to do is we wanted to take the approach of, "Okay we're going to identify these areas." And the reason why we wanted to come up with a mechanism to determine these areas is that if we didn't by default, and this is an EPA mandate, the entire State would be declared sensitive. So this would be a statewide mandate which it isn't good for us because it takes away our flexibility, our regulatory flexibility to do what's fair and what's right with the regulated community. What it does is it gives us a one-size-fits-all approach and you know in Nevada with all of our diverse geology and geohydrology it doesn't make common sense.

Basically, we feel if we went statewide and we didn't take the initiative to come up with a plan to delineate or identify these OSGWA's that it would be counterproductive to what our environmental protection goals are. So, we did come up with a plan and that plan was approved by EPA and it's going to work well in Nevada because we're doing it on a case-by-case basis and with this classified injection well inventory that we're conducting concurrently we will then be able to take these facilities, like I said, on a case-by-case basis and determine if they are or are not in an OSGWA and if their water exceeds drinking water standards naturally, then we would pretty much determine that it was not an OSGWA. In doing this EPA has mandated several deadlines and time frames that we have to adhere to and those are all specified in our regulations. But I do want to note that in section 16, on page 5, line 27 we have a proposed amendment and it was just an oversight.

Chairman Close:
Mr. Cowperthwaite:
Ms. King:

That's Exhibit No. 1?
Exhibit No. 1.

Okay so you have that. I just wanted to make you aware that section 17 has been scratched out and we (inaudible) the entire UIC regs. And basically what that says is that if you're not in a groundwater protection area or other sensitive groundwater area then you still have to get permitted and it specifies the whole realm of what our regs. are. If

you're going to inject you have to have it permitted just by statute and that's all that says. So, anyhow, what we did was we modified our regulations and we had three public workshops. Notifications of the workshops were sent to all of our permittees, to county officials in all of the counties in Nevada, to city engineers, public works supervisors, trade organizations, small business development center, and they were kind of a key group because they offer compliance outreach to small businesses so we thought they were a good one to notify. We published the notification in all of the major Nevada newspapers and we also posted it on our NDEP Web page. The workshops that we had were held in Carson City, Elko and Nevada. We had as little as four people in Elko attend and as many as a whopping 12 people who attended in Las Vegas. So, as you can see, we really didn't drum much interest in this, but I guess the comments that we did get the common thread that ran through the workshops was that the regulated community did want Nevada to maintain primacy and did not want EPA to enforce the program from a federal standpoint. And when all was said and done we didn't receive any written comments regarding any of our modifications. So that's just a brief summary of a little overview of how we came about hitting our modifications and changing them.

Now what I'd like to do is just briefly hit on just a few of the main housekeeping modifications that we're proposing. And, again, these intentions are to clean up our regs. and just clearly make them reflect what our program's activities are today. I'll just say again, our regulations haven't been modified since 1987 when they were originally approved. The first thing that we want to do, section 23, page 10 and it starts at line 19. What we want to do is we want to list the citation out of our general water regulations and they're specifically in the corrective actions section and we want to place them directly into our UIC regulations just to provide clarity of what our authority is. What this citation does is it, once placed in the UIC program, we already have this authority, but one placed in the UIC regulations it clearly says that we have the ability to establish permit limits when a specific standard is, in the absence of a specific contaminant standard. And the reason why this came about there was a permit that was appealed to the State Environmental Commission and there was a question of the authority whether we could do this or not and I'm happy to report that you guys unanimously upheld the permit. But like I said although we have this authority, we just wanted to make it very clear that it is in our regulations so we can avoid any future conflict or ambiguity.

The next thing we want to do is in section 30, page 13 and it starts line 17. What we're proposing to do here is want to lift the prohibition on the injection of treated effluent. The reason why we want to do that is because EPA expanded the definition of a well to include subsurface fluid distribution systems which is just a fancy way of saying leach fields. So now that leach fields has been brought into the universe of our UIC world, we don't want our regulations to contradict themselves which is what would happen if we left this in here. Typically leach fields are associated with septic systems. We have large septic systems that drain to leach fields. For instance, in our State prison systems and they're actually permitted to treat their waste this way and discharge to a leach field. So, if we don't lift this prohibition we're saying that this activity is now illegal in the State of Nevada and we don't think that's good so we're trying to get those out of there.

The last thing that I want to bring to your attention is section 32, page 15 starting at line 1 and this is just our fee section. What we're proposing to do today is to decrease our renewal fees. As you can imagine, we got plenty of support in the workshops for this and really why we'd like to do it is we want to make the fees consistent and straightforward. We want to simplify our fee structures and we've conducted our cost analyses, fee analyses, these fees only hit once every five years. They're not going to impact our program and they're still going to allow clarity on the permittee's part.

I've hit on the highlights of what we're proposing to do today and now I'd like to

welcome questions if you have any specific things you want addressed.

Chairman Close: Any questions?

Commissioner Johnson: A question. A leach field also includes a leach pad and mining operation?

Ms. King: No sir. Those are different things. A leach field is strictly a subsurface fluid distribution to somewhere. It goes into the ground. A heap leach, I believe those things are lined and so it doesn't have a direct route into the ground. I am not familiar with mining procedures, but I don't believe that's an overlap.

Commissioner Johnson: It would be under the injection wells?

Ms. King: No. The Bureau of Mining or our mining bureau would address those and we also, there's a section in our regulations that says, I don't think that can be confused with a leach field by this definition. However, we do have a modification in our regulations to address what you just brought up which says that we will not over-regulate or duplicate regulatory efforts with any of the new definitions that we have because we do have agencies and bureaus that do regulate things and do not need help or us to do it twice.

Chairman Close: Further questions?

Commissioner Ricci: Ms. King the recharge programs done by municipalities, are they covered under this Class V?

Ms. King: They are actually in an "other" section because our classified wells are broken down by geothermal, remediation, if you look through it and there really isn't a section for aquifer recharge. They fall in "other." So, it's kind of a catchall.

Commissioner Ricci: So Class V all others . . .

Ms. King: All others.

Commissioner Ricci: Is the recharge programs?

Ms. King: Yes.

Commissioner Ricci: Municipal recharge programs for potable water.

Ms. King: Yes Commissioner Ricci.

Commissioner Johnson: The regulation that's here you're proposing that there would be perhaps an approval of one of these, the wells related to . . .

Ms. King: Motor vehicle waste disposal wells?

Commissioner Johnson: Motor vehicle waste disposal wells. I can't conceive that we would allow any of these to stay in existence.

Ms. King: Well, basically they're going to have a hard time doing so. We're pretty much just following the federal mandates by incorporating just these huge requirements for these wells. These wells are going to have to meet drinking water standards or natural occurring background levels prior to receiving a permit or being authorized to exist. I think that's going to be difficult for quite a few of these and so the other option will be to either close their well or convert it if they can demonstrate that they are going to be using it just as a storm drain for when they are washing off the vehicles and things like that. And, again, the program is developing, but if they can't demonstrate that they are not degrading groundwater then they cannot maintain the activities in that well. We're pretty firm on that.

Commissioner Johnson: It would seem then the local municipalities have sand/oil separators or related to automobile washes and this sort of thing. But I just can't conceive that anyone's going to jump through these hoops and get a permit. I mean are we just making it overly burdensome or should we just say that we won't permit them or do we have the authority to say that?

Ms. King: Well, Commissioner Johnson what we're doing there is we do have a program in place with the general permit and it's not actually through the UIC program, it's through another branch of our Bureau of Water Pollution Control. Where we do have a general permit for oil/water separators and it's not at this point, it's only because we perceive them as being a problem in the future. And so it's not to take these oil/water separator operations and make them stick strongly to any kind of regulatory compliance. What it is basically is just to get our arms around everything that's out there, get them on a general permit, which there's minimal sampling and reporting, but what it's going to do is it's going to allow us time to build our program and figure out how we're going to address

these and in the meantime we've got everything roped in as best we can. So, that's where we're at today with that.

Commissioner Johnson: I'm less encouraged with your final statement and I would rather see an active program to regulate these things rather than a monitoring program.

Ms. King: Well we're working towards that. Maybe I should clarify. The Class V Rule was brought to us, it was codified on December of '99 so we're gearing up to figure out how we're going to address this. Before we were having a hard time, or we were just keeping up with the things we were doing in our program. Now the whole universe of the UIC program has really expanded and so I understand your concern and I think ultimately that would probably be the best way but it may not be the most reasonable way when you're looking at being flexible and allowing the regulated community the benefit of at least demonstrating that they will not degrade ground waters.

Commissioner Johnson: To demonstrate their ability to continue to pollute?

Ms. King: Well if that's the case sir when we do gear up, like I said at this time we're just trying to inventory them. The general permit is more of an inventory for us right now. They are meeting; they are having to report at this time. But it's more of a way of just letting us get a feel and actual numbers of what's out there. Get them into our program and then when we figure out clearly how we're going to approach this we will then do that. And that's coming up quickly. But first we have to just ensure that we maintain our primacy or else EPA will do it for us.

Commissioner Johnson: I'm much happier to see you come into compliance and you say it was codified 18 months ago essentially?

Ms. King: Right.

Chairman Close: Would you describe a motor vehicle waste disposal well? What is that?

Ms. King: What a motor vehicle waste disposal well is and specifically to the EPA definition, is it's a shallow injection well, kind of like a French-drain sort of thing. But usually or typically it's in an auto repair shop on the floor drain. And, so when they're cleaning up the shop and they spill stuff they just brush it down the drain and it just dead-ends in the ground. So, it's not hooked to any kind of treatment system. It's not hooked to the sewer. It just dead-ends in the ground.

Chairman Close: Where would one of these be allowed to exist? For example, downtown Las Vegas?

Ms. King: You know I don't think so, in many of the places that are hooked up to sewers they're going to have, just by building code, they're going to have a lot of the drains hooked up to sewer. We're investigating that now is all I can tell you, but we are using things like, "Are you hooked up to sewer? Or are you not? What's the age of your building?" to help us eliminate areas that we think are not likely to have these and try to go after the more rural areas that aren't hooked up to sewer and don't have treatment schemes in place.

Chairman Close: With all of the problems we've had with leaking gasoline tanks and the huge uproar about that and the tremendous problems that's given to everyone I can't imagine that we allow oil products just to drain into the ground. I mean is that what I'm hearing?

Ms. King: No. Mr. Chairman what we are saying is that if they can't meet drinking water standards or if the naturally occurring groundwater is high in specific contaminants they can't meet those concentrations then they cannot inject and it's going to be very difficult for them to do that. So, we are basically just folding EPA's mandates into our regulations and that's what they say. You have to meet drinking water standards. But I don't think, we don't envision this as really maybe being practical for owners of these types of wells. And we also aren't finding many of these types of wells in Nevada which is encouraging.

Chairman Close: So, who has to meet the drinking water standards?

Ms. King: Everyone does.

Chairman Close: I mean when you say they don't meet the drinking water standards, you mean the well doesn't meet the drinking water standards? The surrounding area doesn't meet the drinking water standards? Who is "they" that don't meet the drinking water standards?

Ms. King: The holder of a permittee, what the drinking water standard, where it is effective is at the injection point. So whatever's seeping into these wells that is the injection point. If

Chairman Close: whatever that fluid is if it exceeds drinking water standards, it's illegal. It's going to. I mean, anything that comes off from a garage floor I'm not going to drink. I mean so I don't understand what we're talking about.

Commissioner Doppe: Let me ask in another way.

Ms. King: Sure.

Commissioner Doppe: What is says is that the motor vehicle well, per se, is not illegal.

Ms. King: Right.

Commissioner Doppe: But what comes out of it . . .

Ms. King: What goes into it.

Commissioner Doppe: Or what gets injected into the ground has to meet drinking water standards, which it logically will not. So you guys are going to be in the process of closing a whole bunch of them down in the future. Those that you're able to find.

Ms. King: Probably so. Yes.

Commissioner Doppe: It's just the language. Basically, they don't come right out and say, "You can't have one."

Ms. King: Right.

Commissioner Doppe: But they do say that if you are going to have one you have to meet clean water standards and good luck. You can sweep your garage floor and treat it before it goes into the water. You have to pick it up before it hits the ground.

Ms. King: That's right and that's part of the program that will hopefully be helping with the technical assistance which is best management practices.

Commissioner Johnson: Other than a property transfer, how are you ever going to monitor what goes down that hole?

Ms. King: Well, hopefully there will be a sump and this is, we're envisioning, we haven't actually . . .

Commissioner Johnson: Who is going to sample the sump?

Ms. King: The owners will be responsible for sampling the sump. There will be legal requirements for them to do it properly.

Commissioner Johnson: That's only after I have reported that I have one of these.

Ms. King: No. We are conducting a Class V injection well throughout the State of Nevada and we are trying to identify and we're actually doing a fairly good job of identifying these wells. So we are getting a good idea of who has one. But of course if you have one and if for some unforeseen reason we didn't catch it, yes, of course it would be when you brought it to our attention.

Commissioner Johnson: How are you going to catch it? Do you inspect every suspect facility or do you just ask that they self-report it.

Ms. King: Let me answer that. Let me take it in two parts. We're going to find them hopefully the way we we're conducting our inventory is by sending out surveys and there's survey forms and they're targeted, like I said we've eliminated people off of the survey list and targeted people that we think may have the potential to own one of these things. And they have to send it back. We've got the little return addressed stamped envelope and what not and it's certified mail. And Allen has signed this saying that you know if you lie about this you know there's certain legal repercussions. But anyhow they have to answer specific questions and they have to explain why they do or do not think that they have one. And so we're taking the people who say, "Yes we have one" and that they're in the inventory, they get an inspection. The people who say they do not; they are not immediately excluded from the inventory. They are put into a separate list and they are spot-checked for quality assurance purposes. So we're doing the best we can do at this point. But, you know, with this new mandate we really are, I think we're on top of it and I think that as it starts unfolding that all these concerns are going to be flushed out. But right now we're just gearing up at the foundation to start this.

Commissioner Doppe: Thank you Mr. Chairman. I have a question for you. The petition addresses cesspools and motor vehicle wells primarily. Cesspools you stated at the beginning are already illegal in the State?

Ms. King: They are banned and have been in Nevada.

Commissioner Doppe: How do we ban a motor vehicle well?

Ms. King: New motor vehicle waste disposal wells are banned. As of April 5th they are banned. But what we're dealing with is older existing wells.

Commissioner Doppe: How do you treat older existing cesspools?

Ms. King: Well if we found one, they're illegal and so you know whatever repercussions would come from that.

Commissioner Doppe: It just seems like what we're doing here is we're going through two steps to get to the same point and that is fundamentally you cannot have a motor vehicle well because right now you can't have it because it doesn't comply. There seems to be a shorter step to just say you can't have it at all because we know it's not going to comply and let's not go through all of the stuff of having to report it, measure it, all that kind of stuff. If there is one, it's illegal.

Ms. King: Well and I understand and agree with where you're coming from from one standpoint, but I also think as a regulatory entity we're responsible to the regulated community to at least let them come to us and demonstrate that they can or cannot meet the compliance requirement. And I think it would be a little bit strong-armed to just ban them holistically.

Commissioner Doppe: I would give you a period of time to demonstrate that any of the 30 or 50 or however many you ultimately identify an actually dump that stuff at clean water quality into the ground. And if that ultimately proves out to be the case, hopefully then we'll come back and we'll stop this interim step thing and say, "Look they don't work." Just say that. Perhaps we can get there.

Ms. King: Mr. Drozdoff just pointed out to further your question or the answer to your question is that we also would provide the regulated community with the opportunity to treat their waste and there are mechanisms out there to treat prior to injection.

Commissioner Doppe: So there may be something?

Ms. King: Yes.

Chairman Close: Isn't there also a restriction on putting petroleum products into the sewer line?

Ms. King: I believe so. There's a pre-treatment program.

Chairman Close: Which means it goes out to the Sanitation District and they have to treat it? I thought there was a restriction against even doing that.

Ms. King: Well this is outside the realm of UIC so I can't be an authority here. But I do know that there are pre-treatment programs out there that deal with those issues.

Chairman Close: And so you couldn't just have the well and then pipe it into the sewer line because you're putting into the sewer line untreated petroleum products.

Ms. King: There are actually drain well floor drains that do go into the sewer and they run through a pre-treatment program.

Chairman Close: Before it gets into the sewer system?

Ms. King: Before it goes into the sewer.

Chairman Close: I don't disagree with Mark says. You know if you know can't meet the standard and everything you've told me indicates that I'm not going to meet the standard if I'm just letting it leach into the groundwater or the ground basin. It seems like it's more fair really to say in two years or three years or whatever you're not going to do this anymore.

Ms. King: And Mr. Chairman I understand what you're saying, but I think that also doesn't give the regulated community the option to treat and meet those standards if you just take that option away from them.

Chairman Close: So if we adopt this today then can you commence another workshop to maybe terminate this practice totally?

Ms. King: As Mr. Drozdoff just said, we are conducting more public outreach and public education. But at this time this is where we're at and we don't want to, at this point we're not ready to be stricter than EPA. I mean EPA has allowed us to do this because we've developed or come up with a plan for determining other sensitive groundwater areas. So now we have the flexibility to at least give these people a fair chance to demonstrate that they can maintain compliance. It's where we're at right now. You know, we're putting the burden on the well owner. If the well owner can demonstrate they can meet drinking

water standards, then we will work with them and really don't want to put them out of business.

Commissioner Dahl: Mr. Chairman it seems to me like the important question is whether or not the technology is available to treat these products to bring it to drinking water standard. Is it available?

Ms. King: It is available.

Commissioner Dahl: Then if someone opts to treat it, then it should be legal I guess.

Ms. King: Yes. That's what we believe. We think that it would be counterproductive to our environmental goals to strong-arm the regulated community into doing something that they actually could do and meet the compliance restrictions.

Chairman Close: Any other questions? Thank you very much.

Ms. King: Thank you.

Chairman Close: Any further comment? Anybody in the audience who wishes to comment? I'll declare the public hearing closed. Any discussion by the Commission?

Comm. Crawford: **Mr. Chairman I chaired the hearing that we had on the injection and while we thought the agency had the regulatory authority, we suggested that they clarify and improve on the regulation so I compliment them for coming back and getting that done and I would move for adoption of 2001-07 with the amendments presented to us today.**

Commissioner Dahl: **Second**

Chairman Close: **Any comment? Alan?**

Commissioner Coyner: **Ms. King can you give me an estimate on the, back the revenue side of the equation again, impact to the Department on an annual basis due to the reduction of the fee? How many dollars are we talking about essentially rebating back to the regulated community based on the reduction?**

Ms. King: **The money wouldn't actually go back to the regulated community.**

Commissioner Coyner: **I phrased that wrong and I apologize. What's the impact to the Division's budget based on lowering the fees?**

Ms. King: **Less than \$10,000 a year is what we're roughly estimating.**

Chairman Close: **Any other questions?**

Commissioner Johnson: **I have a comment, no question. I'm going to vote against the adoption of this regulation and I have some concerns about the procedure in the OSGWA plans and we'll address that later.**

Chairman Close: **Any further comments? On the motion all in favor?**

Chairman Close: **Aye.**

Commissioner Coyner: **Aye.**

Comm. Crawford: **Aye.**

Commissioner Dahl: **Aye.**

Commissioner Doppe: **Aye.**

Commissioner Gifford: **Aye.**

Commissioner Iverson: **Aye.**

Commissioner Ricci: **Aye.**

Commissioner Johnson: **No.**

The motion carried.

Chairman Close moved to **Item No. III Petition 2000-10.**

(Petition 2000-10 (LCB R-104-00)) is a permanent amendment to NAC 445A.119 to 445A.225, the water pollution control standards for water quality. The amendment adds new water quality standards and beneficial uses for Walker Lake and amends the standards for various reaches of the East and West forks of the Walker River. A new control point is proposed to be added on the east Walker River at Bridge B-1475 at the state line with California. Amendments are proposed for NAC 445A.159 to 445A.169, inclusive including Sweetwater Creek and Desert Creek of the Walker River. Amendments vary for each reach defined above, but include: temperature, pH, total phosphates, nitrogen species as N, Dissolved Oxygen, suspended solids, turbidity, color, total dissolved solids, chloride, sulfate, the sodium adsorption ratio, alkalinity and Escherichia coli. It is proposed to revise the time period that adult Lahontan cutthroat trout may be present in the reach from Walker Lake to Weber Reservoir.

(Adopted by the Environmental Commission on February 15, 2001 and heard and acted upon by the Legislative Commission on April 17, 2001)

Chairman Close: We had it returned to us from the Legislative Commission and now from the legislature.
Mr. Biaggi: Given some recent developments that occurred early this morning I was wondering if we couldn't take a 10-minute recess so that we could discuss this with the Commission counsel in terms of some legislation that appeared late last evening.

Chairman Close: If there's no objection we'll take a 10-minute recess.

Mr. Biaggi: Thank you Mr. Chairman and Commission members. My name is Allen Biaggi and I'm the administrator of the Nevada Division of Environmental Protection. Petition 2000-10 refers to a remission back to the State Environmental Commission by the Legislative Commission for the standards for Walker River and Walker Lake. Let me give you a little bit of background, although I know you're all intimately aware of what's transpired over the last couple of years. The State Environmental Commission had two meetings previously. One was in Yerington and one was in Carson City. The Commission heard over nine hours of testimony from both sides of this very contentious issue and as you'll recall there was a balancing act that needed to be made between fish and wildlife issues, agricultural interests, tourism, and wildlife concerns. This body approved the proposed package with revisions on a vote of 5 to 4. Per State law, the Legislative Committee reviews each set of regulations passed by an executive agency prior to their codification into the Nevada Administrative Code. These regulations were considered by the Legislative Commission on April 17, 2001 who voted unanimously to remand the regulations back to this body. I also would like to point out that that was based upon discussions solely on the river system and not on the lake, or on the lake system and not on the river. The letter from Brenda Erdoes of the Legislative Counsel Bureau Legal Division is in your packet outlining the policies and procedures for remanding these requirements back to the SEC. I would also like to point out that this is the first time that this has ever happened to the State Environmental Commission. So, from that perspective we're a little bit in uncharted waters. From the Division's perspective we believe that the recommendation we came forward with was appropriate, was science-based and consistent with all of the appropriate statutes and regulations governing water quantity, water quality, historical irrigation practices and the balance of business, industry, and agriculture. Obviously, the Legislative Commission does not concur with that recommendation.

One development that occurred late yesterday afternoon is that a piece of legislation was introduced to the Nevada legislature which, hopefully you all have by now. I just saw it for the first time this morning as I walked in the door. That's SCR 40 and it outlines the decision of the Legislative Commission and affirms that those regulations by their decision on April 17, 2001 could not move forward. Additionally, I've provided to you a letter that I received late yesterday afternoon from the Sierra Club outlining their comments and concerns regarding the regulations.

So, where does that leave us right now and where do we need to do in terms of going forward? I think as you're all aware, not moving forward with water quality standards on the lake and the river has significant ramifications from a legal perspective, not only for this body, but for the State of Nevada in general. As we said prior to the previous meetings, no matter what decision is made with regard to these water quality standards, there's likely going to be some sort of a litigation that arises out of it. Obviously if standards aren't approved, ultimately they may be taken out of the hands of this body and of the State of Nevada and will be adopted by either federal EPA or the court system.

With regard to recommendations that we would provide you for today, I think we see two avenues of ways to move and I'm going to refer to your legal counsel for a little bit of clarification on one of these. But we see two options. The first option is to hold off, not

take any action today, let us review what SCR 40 means and what the actions of the Legislative Commission means. The other option is to move forward and re-adopt the river only. There is general agreement that there's no controversy with regard to the river itself. You didn't hear a lot of testimony on it. In fact, in one respect the river standards actually laxen the pH standards for the river and may get us out of some impairment issues with regard to certain stretches of the Walker River. But I think those are our two options today. Susan, maybe you want to talk a little bit more about the option of delay.

DAG Gray:

This being an unusual situation in which the legislature acts on the Legislative Commission's decision prior to giving the State agency an opportunity to revise and resubmit it kind of leaves us holding our hands in the air going, "Well what do we do then? Is it too late? Do we simply have to start the process all over again?" And we don't really know the answer to that question. Because of that, I don't know if we could ever find the answer to that question. There may not be an answer in that this just has not happened before. If we had the option to talk to the legislative counsel, perhaps she could give us some guidance. However, the other suggestion being that we simply revise the river standards by bifurcating it from the Walker Lake standards and attempting to resubmit it, there's no guarantee that LCB would accept it, but we could at least make the attempt. Or simply wait until the next meeting and maybe have some more information.

Chairman Close:

Allen did you have the opportunity to listen to any of the arguments made in the legislature regarding this matter and if so what was said?

Mr. Biaggi:

Mr. Chairman we had the opportunity to listen to the Legislative Commission's, you know, I made testimony to the Legislative Commission as did Mr. DePaoli, representing the Walker River Irrigation District and I don't think that there was anything new in either of our arguments that you didn't hear in that nine hours of testimony. Now with regard to SCR 40 I think it just came out in the last day or so. I don't believe there's been any hearings on that piece of legislation and so I have nothing further to add in that regard.

Chairman Close:

What did the Legislative Commission say in their deliberations relative to, before they took their position? What did they say?

Mr. Biaggi:

There was a substantial amount of discussion with regard to historic irrigation practices and water rights. One of the legislators also asked in a number of ways whether or not this was a public health issue, or was this just dealing with issues of recreation, wildlife, tourism and business and industry. One of the legislators, Senator Titus, did make a comment with regard to losing control of the standards process and having the standards initiated by a court or by federal EPA. But by far the majority of the testimony was with regard to historic irrigation practices and water rights issues.

Commissioner Iverson:

Mr. Biaggi:

Mr. Chairman can I ask him to repeat those two choices again that we might have? Mr. Iverson the two choices that I think we would suggest you consider today: (1) is not do anything today to allow both your legal counsel and us as the program staff to make inquiries and determinations of what exactly the new piece of legislation, SCR 40, means and what ramifications it does have to these standards. The other option is to move forward with the river standards only. To bifurcate off the lake, which is the controversial part and move forward with adoption of those today. We will then take those to the Legislative Counsel Bureau and back to the Legislative Commission to be reconsidered. I've been in conversation with members of the Walker River Irrigation District who are here in attendance today and that was an option that was agreeable to both of us, but with the determination and the finding of SCR 40 this morning, it puts a little question into moving forward in that regard.

Commissioner Iverson:

Can I just continue on with that question a little bit just so I have a better understanding? When you're talking about pulling off the river regulations and separating them from the lake, I think from day one the issue has been, and you bring it up, the impacts on irrigation upstream and when you, and can we go ahead with adopting regulations upstream, separating them off, without having those kinds of impacts? They're concerned about it. And I guess secondly, again I think there's

going to be a balancing act here when you talk about public health versus recreation and fish compared to historic water rights and making and impacting a community there has to be some value put on all of these things.

Mr. Biaggi:

You need me to respond to those questions? I think those are very good and very valid.

As you'll probably recall from Tom Porta and John Heggeness's testimony back in Yerington, Walker River standards have been in place for many, many years, for a couple of decades. So I don't see any problem of cleaving off the Walker River standards, modifying them and the Commission just doesn't go forward with lake standards. That would essentially be a status quo that's been in place for the last 20 years. With regard to the health issue, it was recognized and we testified before the Legislative Commission that this is not a public health issue. It's an issue of tourism, wildlife, irrigation, etc. So there's not a public health component to this as we see it.

Commissioner Iverson: Thanks Allen.

Commissioner Johnson: Mr. Chairman a couple of comments and I don't think that those two options are necessarily all that we need to consider. The lake is still there whether we wish to address it again is controversial and raise the standard to 20,000 or put it in at 5,000. That's within our prerogative. And I think there's several points. I think in the letter that we have on file from LCB, particular I would read into the record this is a letter addressed to David Cowperthwaite from the Legislative Counsel Bureau. On the second paragraph the last page it says, "The concern appears to derive in part from comments made by Committee members and a witness that during years of drought the standard for total dissolved solids established by regulation would be difficult, if not impossible, to meet without curtailing current water allocations for other beneficial use in the area including irrigation for agriculture." I clearly think that within the regulation we had made a statement that those water rights and nothing within these standards would interfere with those rights. And I think that there's a misperception on the part of the Legislative Commission, perhaps, on that basis, not that that removes anything from their action. But, lastly, on SCR 40 the justification for segmenting this it says, "Quality standards for Walker River and Walker Lake." The entire document was returned to us and rejected. So, it either leaves that we can act on any or all parts of it, or none of it. I mean we're not constrained by there only being controversy on the lake portion. That's the part that drove this for sure and the part that let this Commission be divided on the issue. But I don't think that we need to necessarily think that that's all there is our options.

DAG Gray:

There is one more option which essentially would be to start the process over again with both the lake both the river, do the public workshops, the public comment and essentially draft new regulations. We all know what that process is like. We just went through it and we would just have to do it again and hope that the Legislative Commission reviewed it they would accept it.

Commissioner Iverson: If I'm not mistaken the reason that the Legislative Commission was set up is so that bodies like this, bodies like my regulatory body at the Department of Agriculture, Alan's regulatory body, we don't pass regulations that they don't have a chance to look at. And if I'm not mistaken, they have to give final approval. We cannot pass regulations that can't get through this committee. Maybe a third option, Allen, might be, and I realize it's an option your first option was to forget about these today and move forward. I'm not so sure in looking at the controversy that was brought up on this and the questions that are in this letter if you can get this through the Legislative Commission without having the opportunity to sit down with that Commission and talk to them about some of the issues that brought up in this body. You're not going to adopt regulations on that lake that I could see in all of the nine hours of hearing that we had that's not going to impact upstream users. And I think you've got, it may be an option, an option you haven't talked about is to not act on these today, but to understand what the letter says and to maybe set up a meeting with the Environmental Commission while they're here, not the Environmental Commission, with the

Legislative Commission where this body could sit down with them and discuss some of those issues. Maybe they need to understand why a decision was made the way it was.

Mr. Biaggi: Well, I was just going to respond back to Mr. Johnson's question two ago and Paul, I agree. That is another option and we would be happy to set that meeting up if that's what's desired. Joe, I just wanted to remind you that the language which was, "Because Walker Lake is a body of water without a natural outlet, the Commission recognizes that water quality can be significantly impacted by climatic conditions and thus attainment of standards may not be achievable at all times" I think that's what you're referring to? That was omitted on the regulations by this body.

Commissioner Johnson: There's a particular, if we have the . . .

Comm. Crawforth: I think we added the part about their water rights when the regulation was adopted. There was some additional language that I think . . .

Mr. Biaggi: We'll have to research that and I do recall that discussion about the water rights and it's foggy in my mind because we had it in the original petition and then . . .

Commissioner Johnson: I would read right off the front, "LCB File No. R104-00 Section 2. Water quality standards established in NAC 445A.070 to 445A.348 must not be construed to amend, modify, or supercede rights to quantities of water which have been established by the State engineer, or by applicable Court decree." We accepted the Irrigation District's amendment on that issue and that portion is in there and right by our regulation we said that it doesn't affect and primarily right off in the lead paragraph this is what the Counsel Bureau . . .

Mr. Biaggi: But Mr. Johnson you have to recognize that that is what was sent as a description over to LCB and my testimony before the Legislative Commission specifically addressed the statutory requirements of this body and the water quality regulations that it establishes to not impinge or impact historic irrigation practices, water rights, or other things that are done by the State engineer. That was not a compelling argument to them and that's where they voted unanimously to remand them back to you.

Commissioner Johnson: I understand. I'm just saying that perhaps an Attorney General's Opinion about this particular thing in the application and the concern that's expressed there might be appropriate.

Commissioner Ricci: As you will recall when we had the vote on this particular one I abstained as a result of the litigation that we were involved in. That litigation, I'm not sure if it's done, at least it's done with the Nevada Supreme Court. The Nevada Supreme Court ruled in favor, or actually denied the writ of petition of mandamus against the Walker Lake Working Group from Mineral County and in favor of the Division of Water Resources, Department of Conservation and Natural Resources. They recognized that this public trust element that they were seeking to invoke to get additional water to Walker Lake did have some terrific ramifications on the economics of the area. While at the same time, it was a unanimous decision, excuse me there were I'm a little foggy on it, I can't remember exactly how they did it, but there was basically an opinion written and signed by three of the judges that indicated that even though the public trust issue hasn't been ever addressed in the State of Nevada that it might be time now in which to do so and the very argument that we made in the Supreme Court argument is the very people that need to make that decision is the legislature. So now they have said, "Well the Environmental Commission can't make the regulations." Maybe what they're going to be confronted with next session is this public trust element and then they're going to have to figure out what to do.

Commissioner Iverson: Allen was there very much discussion about and I know we had lots of discussion here about the science that was used to base some of this data on and the idea that kept coming up over and over and over again at that hearing in Yerington is that we're establishing regulations that we couldn't, we were establishing guidelines and regulations we may never be able to attain, but and is there a reasonable, can we adopt regulations when we know we can't attain it? Is that worthwhile doing and then the other thing is was there any discussion on the fact that we needed to get going on

something?

Mr. Biaggi: Well, the issue of attainable standards did come up and it was discussed quite a bit. Mr. DePaoli brought it up, obviously, from his perspective that he didn't feel that these regulations, as were adopted by this body, were attainable and I think the legislature heard that fairly clearly. The other issue was . . .

Commissioner Iverson: Did they understand the idea that something needs to happen?

Mr. Biaggi: Absolutely. I think they did and I think that goes to the heart of Senator Titus's comment saying that if the State of Nevada doesn't do something that it will be taken out of their hands and will be decided by the courts or by federal EPA. If you'd like, we've got an EPA representative here in the audience today and she can speak to perhaps a little bit of the process of what happens if the State doesn't act and what can happen. So, I'll leave that as an option if you'd like to hear from her.

Commissioner Iverson: Was that person at the Commission hearing and let the Commission.

Mr. Biaggi: No she was not.

Commissioner Iverson: Sometimes I think we forget what EPA rules, that you don't make all the decisions in the world. That there is sometimes a larger body out there. I really think there's an opportunity to sit down with that Commission and to have you bring in experts that can talk to that Commission and so the Commission understands where this body is coming from too.

Chairman Close: This is a tough decision because you've got a 60 – 0 vote out of the legislature and having been there I know that those are not usually obtained. It's very difficult to obtain. There is a strong, strong feeling; I don't care what we're thinking about up here. We have our responsibilities and they have their constituencies and that's the bottom line. Sixty to zero is strong. And to send something back to these guys . . .

Mr. Biaggi: Mr. Chairman I think we need to clarify here that the Legislative Committee is a subcommittee of both the Senate and the Assembly and there's maybe 25 of them.

Chairman Close: Except SCR 40 was 60 – 0.

Mr. Biaggi: I wasn't aware of that. It's already passed?

Chairman Close: Yes and it was 60 – 0.

Commissioner Johnson: I'd like to remind you that in the politics of this is simply that the Ex-Speaker was the person who presented this issue before the Commission and it is significant.

Chairman Close: You know I don't want to give him too much credit or too much blame. But surely he had an impact. I won't deny that. But to return something to them after we've got a 60 – 0 vote without some modification that is going to convince them that we have not just sent them back what they sent down to us. It's like the Supreme Court. If the District Court makes the decision and the Supreme Court turns it back to them and the District Court rules again the Supreme Court is not going to be happy when it comes back up the second time. So unless we can do something I think that is significant to take care of the concerns that I presume exist in the legislature and in the Commission then I think that we're going to have the same result as we have right now. We're going to have nothing. If we're going to do something we have to do it in a way that it is going to pass inspection by those who have authority over us. That's the bottom line. Demar?

Commissioner Dahl: I think another important consideration is that we're appointed and they're elected.

Commissioner Doppe: I think that's a very important consideration.

Commissioner Iverson: I doubt very much with a 60 – 0 vote and looking at the members of that Commission and I think what Mr. Johnson brings out, until you make some, until there's some more comfortable feelings concerning upstream water use and impacts on the economy out there, you may be looking at starting over again and going through this whole process and coming up with a whole new set of regulations and submitting them and having them rejected again. I really think there needs to be compromise and some negotiations and some people like yourself who have been there, some people from the private sector and some folks like you and Demar Dahl or Mark that can sit down with these legislators and talk to them. It's nice for us in the government agencies to be

there to provide some technical background, but there's some real politics in this issue.

Chairman Close: There are and if we just adopt the river standards now that it's been rejected and send it back to them, I think it's going to be looked at with some question as to whether or not this does not continue to accomplish things the legislature deems to be inappropriate and maybe you convince them that it doesn't maybe because there's always standards on the river at the present, maybe you can convince them of that maybe you can't. I don't know. But you would have a hard sell when it's 60 – 0.

Commissioner Johnson: I think that it must be of note that SCR 40 remands three, or two other regulations back to the source, not only this one. And the process is one that at this particular time of the legislature they take the Committee's recommendation. There is very little discussion on the issue and remanding these issues back. I personally would not vote again for 12,000 ppm standard on the lake. I don't see that this Commission would find a majority that would agree on any standard or even the Irrigation District's variable standard. But I think that we should, from my point, I would like to see us address the river standards. I'd like to see us address the issue of beneficial use on the lake and I say that there's no majority opinion on the standards for the total dissolved solids standards on the lake. There may or may not be. But I think that we ought to progress with what we have. I don't see that whatever we adopt if it's not of concern to the Irrigation District that the issue will be disapproved by the Legislative Commission. In the sequence of things it will be two years before it would be reviewed. It may be held in abeyance, but it wouldn't be returned to us.

Mr. Biaggi: Well David correct me if I'm wrong, the Legislative Commission meets when they're not in sessions.

Commissioner Johnson: Yes exactly, but they only say, "We don't accept it" and it then goes to the legislature in the next session.

Mr. Biaggi: In the next session. That's right.

Commissioner Johnson: This happened because they were in session and as I recall legislative history on this, and I may be wrong, that if they take this action during the session and there's reasonable time, it has to go to the legislature. That's why you have these three regulations that were returned.

Mr. Biaggi: Well I think that's a question in our mind and Susan and I have been talking about that. I left a message with Brenda Erdoes this morning who is the head of LCB Legal Division to see what her take on this is and I think that's one of the questions that we need to understand is what's the timing?

Commissioner Doppe: How long do we have before the EPA steps in and takes over this issue themselves? They say, "The State of Nevada is at an impasse."

Stephanie Wilson: I'm Stephanie Wilson. I'm with the Environmental Protection Agency Region IX out of San Francisco and what we would do is, depending on what action was taken, review that action and then decide what the threat to the resource was as to how our action, what course we would take. So it would take us a while to make that decision. But that also would depend on what action was taken.

Commissioner Doppe: Has the EPA done the work with regard to Walker Lake to determine a baseline beneficial use so that you can determine whether or not it's being threatened? How far along are you?

Ms. Wilson: We haven't done anything at this point, except for working with the State and reviewing what they have done. It's been our policy that the State should set the standards. If no action is taken or if we feel that the State's standards are not protective then we can promulgate. So at this point we haven't done anything. The Clean Water Act requires that the beneficial uses at a minimum protect aquatic life, wildlife, and recreation and then consider public health, irrigation, agriculture. So, that would be the baseline that we would use.

Commissioner Dahl: Would you repeat that please? What you just said.

Ms. Wilson: The Clean Water Act requires that a minimum that the beneficial use is considered protection of aquatic life, wildlife, and recreation and then they may also consider other uses such as public health, irrigation, agriculture and others. But those are the

minimum that are required for beneficial uses.

Commissioner Iverson: Recreation comes above public health?

Ms. Wilson: For the Clean Water Act, yes.

Chairman Close: Is your concern in that order that you've given to us? I mean aquatic life takes precedence over farming needs and farming uses?

Ms. Wilson: That's the way it's written in the Clean Water Act. The exact language is, "Revised or new water quality standards shall consist of the designated uses of the navigable waters involved and the water quality criteria for such waters based upon the uses. Such standards shall be such as to protect aquatic life, wildlife and recreational uses and then they may be also take into consideration public water supply, propagation of fish and wildlife, recreation, agriculture industry." So that is how we have to look at it.

Commissioner Dahl: I've never liked this argument that if we don't do something then the federal regulations are going to come in and take care of the problem, or regulators will because there are some things that are patently ridiculous and those regulations that never get addressed, if we always take the position that we've got to fall right in line or else they're going to come and straighten us out. And so I just want to express my opinion about how I feel about taking that approach.

Mr. Biaggi: Mr. Dahl we agree. I mean it's not something that we take lightly and that we like either. But, in this case this is not a hollow promise. The EPA and the courts have done this many, many times in other states and I've always taken the opinion that it's better that Nevadans regulate Nevada business, industry, agriculture, etc. than the courts and federal EPA. As I've mentioned to you in the past with regard to the TMDL issues, Nevada is one of the few states that hasn't been sued over TMDL's and had them imposed and foisted upon us. So, unfortunately in this situation it's not a hollow threat that it is likely and probably will be done eventually if things do not move forward.

Commissioner Dahl: And I agree with you that it's not a hollow threat, but it joins the issues that leads to them and the issues are addressed where otherwise they may not be.

Commissioner Crawforth: Allen, the current water quality standards for the river, do those expire or they're in place absent this regulation and would continue, that would be the State's word on it?

Mr. Biaggi: That's right, they don't expire.

Commissioner Crawforth: Ad infinitum if this regulation doesn't pass?

Mr. Biaggi: That's right. They don't expire. They don't have a shelf life on them. We are required to do a tri-annual review of all water quality standards, which we have done.

Commissioner Crawforth: I'm assuming that the current water quality standards do not meet newer criteria then?

Mr. Biaggi: Well as you heard in the testimony there are some revised changes from EPA's standpoint. For example, this pH one is, EPA is recommending a broader range of pH requirements in order to protect the beneficial uses. That's one of the recommendations we have made in the revised standards. So, as you will recall the river were wholesale revisions. They were relatively minor technical corrections.

Commissioner Crawforth: Then I guess from a couple of standpoints I know there's some people that feel that the rules that were stayed from EPA and what their guidelines are on aquatic life and etc. we ought to be considering human health and etc. first. But is it a fair statement that the hierarchy of that, if you will, is that if you protect aquatic life that will be a higher standard, if you will, than human health and agriculture and etc?

Mr. Biaggi: I think you're correct and I think you also need to put this into the context of the Clean Water Act and beneficial use identification in that when they say "public health" they're talking about drinking water. Now the Humboldt River, for example, has never been used as a surface water source for drinking water purposes to my knowledge. So, in that situation, you know, the public health concern there is the fact that it's not used for drinking water purposes by a community.

Commissioner Crawforth: It was stated earlier that we would start working on it from EPA and that it

would be a while before, could you get us in the ballpark for when “a while” is? Are we talking two decades, or two years or?

Ms. Wilson:

No. The administrator in Washington has to make the decision. So what would happen is the region would review what the work done by NDEP on the, we would review the river standards as they currently stand if they aren't changed to see if there was anything that was not up to Clean Water Act criteria now. And then we would look at the lake and the fact that it has no standards and then we would make a decision as to whether to promulgate. We have to follow the same process that the State does. So we would have to put in the federal register, draft regulations and we would have to hold public hearings and then we would have to finalize the regulations based on the comments. So we would go through that same process. The decision as to whether or not to promulgate would probably come, I don't know, within six months I'd say and then we would have all of the background information. We would have to do the same process, go through all of the data and everything else. So it would take us a while to promulgate as well. But we would make the decision I think fairly soon.

Commissioner Crawford: If you would allow me, I guess, a disclosure, when we met in Yerington a number of months ago we were concerned about the achievability of the standard at 10,000 ppm for Walker Lake and especially and I think several Commissioners, I specifically remember Commissioner Doppe, being concerned that we were already exceeding 10,000 ppm so how could we ever achieve this and we developed the regulation passed at 12,000; however, we're now in exceedence of that. Some of you may be aware of that and some of you are not. But the TDS at Walker Lake today is about 12,800 or 12,900. So, it's gone up better than 2,000 ppm while we've been talking about it. We've recently stocked fish there and experienced increased mortality because of that TDS in our stocking. So, I guess just an update of the situation there.

Commissioner Doppe: Would this not be the low water point of the year though, just about? Prior to the runoff? Runoff hasn't really occurred yet, has it?

Commissioner Johnson: Yes, but they're not getting more.

Commissioner Crawford: It's pretty well done.

Commissioner Doppe: Is it?

Commissioner Crawford: Yes.

Commissioner Johnson: Yes.

Commissioner Crawford: For this year. There's not much water in the system and the irrigation season has started. I don't know what it is today, but a couple of weeks ago there was about 5 feet per second hitting the lake, so . . .

Commissioner Doppe: My whole confusion in Yerington and I got a little bit of it cleared up with the meeting that I was fortunate enough to have with the Division later on in Las Vegas when they happened to be down there and I asked some specific questions. What is our charge? What is our responsibility? And it made me reasonably comfortable that our first responsibility was to protect, you know if we don't do it the EPA is going to uphold the Clean Water Act as it existed. But we had always discussed as a group, and you guys I think wisely in Carson City when you adopted the thing, you said, “We're going to set the standard, but that standard is not meant to say look we are going to go and start yanking the water out from people up the river.” And I think we were very clear about that. What we tried to do is say, what I thought, and my intent was that that standard was meant to spur on creative new ways to stop giving new issuances of water and to start seeing are there ways that we can work with the people upstream to conserve to come up with programs to get them to do stuff like line channels and stuff like that. Not compel them to, but to make it worth their while, all aimed at putting more water into the system. Not trying to grab their water, but trying to come up with and say, “Look you have to separate the target from where we are and if we keep the moving the target up to a failed system, then we're never going to get there.” But if we set it to where it ought to be, or at least compromise to where it ought to be, and I think the 12,000 was a reasonable compromise, then we work towards it and come up with some

creative ways and that's what I thought that we were doing and I thought that that was a good compromise.

Mr. Biaggi: Yes, and just to sort of follow up on that and sort of respond to Joe's question probably half-an-hour ago is that you did amend the regulation and you specifically stated that it wouldn't impact or hinder water rights and then you added the words, "Or by applicable court decree." So, the regulation as it did go over to the Legislative Commission specifically indicated that it was not to impact water rights.

Commissioner Iverson: Allen, would you, you gave us two options. You're the full-time administrator and you've got a professional staff that works on this, you're familiar with the politics between you and Mike Turnipseed, you know, you've been involved with this, you know the people on the Commission, you know the legislators, what do you want to do? That would help me make a decision.

Mr. Biaggi: Well up until the moment I walked in the door this morning my recommendation to this body was going to be to move forward with the river standards and let us work with the Irrigation District and some of the folks on the downstream side and see if we can come up to some resolution with the lake standards. I think SCR 40 throws a big monkey wrench into that.

Commissioner Iverson: So what do you want to do?

Mr. Biaggi: I don't really have, I haven't had time to think about this and I've learned about this two hours ago. I think your legal counsel has given you what her opinion is and I think that that may be some sage advice.

Chairman Close: Is there any urgency on the river standards being adopted?

Mr. Biaggi: Not really.

Chairman Close: I mean the river standards were probably looked at because of the Walker Lake situation and as part of the entire package you looked at the river and the lake. And so there's nothing, from what I understand, there's nothing the EPA is going to come down and compel us to do because of the Walker River. They're concerned, I mean they are the most area of concern is the river, I mean the lake, and there's not enough water, I don't know how they can treat the water, if there's not, if there's no urgency is adopting the river standards that we have considered, I would think that we ought to reconsider what we're doing so that when this thing is looked again from the legislative aspect they're going to say, "Well they've done something. They haven't just sent back to us what we have rejected." They probably did not even look carefully at the river standards, you know, but still we're sending back to them what they just gave back to us and I think that it's not going to be a good relationship.

Commissioner Iverson: I don't think you'll ever get to a point on this Committee, from the way the vote goes on this Committee and from the audience, that you will ever get to a point, I think the issue has got to be between you and this Commission because I don't think you'll ever get to the point with the people on that body of that Commission and the people on the body of this Commission where you'll come up with a compromise on it.

Chairman Close: Well they've been trying to come up with a compromise for months. I mean you've been working on this for a long, long time.

Mr. Biaggi: Over two years.

Chairman Close: Over two years. So they've been working on it over two years.

Mr. Biaggi: Mr. Chairman that's another thing that concerns me greatly is that we have a relatively small staff that does review of these water quality standards and we have spent two years now doing Walker Lake, and, quite frankly we need to move on to other river systems. We're working on the Humboldt right now. And, so I have to be a little, give some consideration to our workload and, you know, quite frankly we can't balance doing two major river systems and their standards at the same time. We have to really focus on one and so, that's a consideration I need to throw out there as well.

Commissioner Gifford: I would agree with Paul. I mean having sat through all of the hearings, having sat through all of the discussions that we've had as a Commission, and at this point I think I would be very much in favor of doing nothing, putting it aside, letting it go and go on to the next river system and have a good time there. At this point to me it, I mean

you're starting the whole two-year process all over again, well, you might short cut it by half the time or something, and we have all the hearings again, we have this ping-pong-ball effect. It goes off, it bounces right back to us again. In fact, at this point I would make it a motion just to force the issue. I move that the Commission do nothing with respect to this petition.

Chairman Close: Is there a second on that motion?

Commissioner Dahl: I'll second it.

Chairman Close: Discussion. Hugh?

Commissioner Ricci: What I'd like to ask the EPA representative, Ms. Wilson, is if the EPA does step in, do they have any clout under the Clean Water Act to do exactly what this Commission didn't want them to and that is to take water rights away to make the lake standards be able to be met?

Mr. Biaggi: And the answer to that is absolutely not. The Clean Water Act specifically prohibits the use of impinging, just like State law does, on the existing water rights or irrigation practices.

Chairman Close: Let me just tell the audience something and you may have to withdraw your motion, is that we have people out here from Walker Lake and River and I think they're here and we should give them an opportunity to be heard even though it may be that what we'll do is exactly what you're motion suggested. Is there any objection if we don't take a vote on that until after we hear from the audience?

There was no objection

Chairman Close: We do have at least two people who want to speak. William Schaeffer?

William Schaeffer: Actually in light of the comments that have been made I would just echo that we suggest that we do nothing and go back to the drawing board. I represent the Dynamic Action on Wells Group DAWG and you guys are familiar with me. I've been here before. I would like to take a little bit of issue with folks and echo what Mr. Dahl said. The federal EPA can't do any more than the State can do. They are governed by the Clean Water Act which has similar language to the State act, although our says specifically "reasonably attainable" and the federal act, as I pointed out in my comments back in December 5th, says "attainable." Okay? That being the case, I believe the Division has the duty, and I've been saying this, I feel like I'm beating a dead horse, has the duty, legal duty, to show how the standards can be met without impacting agriculture and the fact that you don't necessarily take anybody's water rights away does not impress me. The Owens Valley, water rights were not taken away. But it's nothing like it was at the turn-of-the-century, that is of the last century. That is where the problem is. That is what I believe the Legislative Commission is wrestling with. If you set these standards the way you did, or anything close thereto, and not show how you're going to do it without taking away the use of the water for agriculture, you're going to impact on places like Dini's Lucky Club, owned by the speaker who just happened to sit on the Legislative Commission and all of the businesses which don't have water rights, okay, that is where the issue is. The industries that depend on the agriculture, the existing industries upstream, those things are affected, they are a part-and-parcel of your jurisdiction that you're supposed to consider both under the federal act and under the State act. That I believe is why you are in this quandary. Before you come back to this issue, please figure out how you're going to do it without taking water that agriculture depends on. If they can do things in better ways, as you said, fine. But make sure you know they can do that before you set the standard. Tell them how you're going to do it before you set the standard. Thank you.

Chairman Close: Mr. Strouse?

Glen Strouse: When I first walked through that door this morning I had no idea that I would be here talking to this Commission and as I continue to listen I find that I'm just on the cutting edge of what's going on. And I implore you gentlemen that we are also a part of your contingency as well from Mineral County. As I said before, I'm with the Walker Lake

Working Group. Mineral County is greatly dependent upon the fisheries of Walker Lake. The tourists that come in from all over, not only the State, but from all over the United States come to Walker Lake. Not only that, but it's an essential and unique area. It's one of the only lakes, terminal lakes in the world that supports a fishery. And it also is a place for recreation and of scenic beauty and without water quality Walker Lake is dead. The problem is that if the total dissolved solids increase to the extent of over 14,000 parts per liter, then the lake, the life in the lake becomes so stressed that in some species they will no longer exist. Some of the species in which feed the trout which is a great extent one of the parts of our, which is an important factor in our county's economy. So, I implore you gentlemen, do not forget Mineral County. Do not forget Walker Lake, and in your decision, because we are a part of your responsibility and I do implore you to consider this. Thank you sir.

Chairman Close:

Dale Ferguson:

Does anybody else wish to speak on this measure?

Mr. Chairman, Dale Ferguson, legal counsel for the Walker River Irrigation District. Like Allen, I received a copy of SCR 40 just this morning after I had been here for a few minutes and I think your legal counsel has told you that she is somewhat unsure of the import of SCR 40 on what we're doing here today. I also, at this point, without having the chance to take a look at that language and to take a look at the underlying NRS 233B.0675 which is cited in there, am a little bit unsure about how this piece of legislation impacts what comes out of this meeting today. And so I would ask you to take no action until we can make a determination about that. At the same time, I don't think that anyone is wanting to just sit around and do nothing. I think that the presentation that we made at the hearing back on February 5th had information in it about special habitats, but that information was not complete and needs additional research. This would also give us time to perhaps see if some of that could be accomplished or at least get in the direction where we would be headed towards looking at that. Thanks.

Commissioner Iverson:

Mr. Chairman can I ask a question? You make a mention that, and I think everyone probably agrees with this, is that these regulations were basically passed two months ago by this Commission and then they started through the legislative process. Hopefully those people who are going to have an impact and the science the data, the Irrigation District, the Mineral County folks are all doing things to improve the water quality down there and I would hope that no matter what happens with this document that's in this book, that those efforts continue to go forward because I don't think there's anybody, agriculture, mining, Mineral County, Yerington folks, that want to do anything to hurt. I think that those people are trying to do things now to improve it. I hope no one says, "Look SB 40, or whatever it is, SCR 40 we've got to quit doing what we're doing to try to improve." I would encourage all those people to continue what they're doing, but I agree with you. We need to take a look at this and figure out where we're at on it.

Mr. Ferguson:

The district has expended a substantial amount already in biologists to look at the Walker Lake ecosystem to in preparation for these hearings and some of the information that came out of that I think is very useful and with some further looking into could prove to be very helpful and I don't think there's any intention to just do nothing. Thank you.

Chairman Close:

Mr. Strouse:

Chairman Close:

Mr. Strouse:

Does anyone else wish to testify on this matter? Now we'll go back to your motion.

Could I make one comment please?

Yes. Come back up to the podium please.

Commissioner Doppe, some of the things he said I think were quite excellent, the way that the Walker Lake Working Group thinks that we should work together and try to find some ways of conserving more water. We certainly, there are no means want to take away anyone's livelihood. We just wonder how we can share water and to find creative methods in which we can get together and do this is one of our goals. But yet the lake must survive. The present ecology and the ecosystem of the lake at its present form and better quality should survive. And that's what we're about, continue

fisheries in Walker Lake.

Chairman Close:

Commissioner Doppe:

Anybody else? Back to Mr. Gifford's motion, unless you have a comment. Discussion? I agree. Let me start by saying that I agree. The Division has spent 18 months on this issue. Our Commission has spent six months on the issue. I don't know what the intent of the legislature was when they just said, "no." I don't know if they wanted us to do, try again? It's confusing to me, but it's not logical having spent 18 months of public hearings and discussion that we're going to come up with a very different answer the next time than we did the first time. And so I think to try it again would be a waste of time. I think we've come up with an answer that is reasoned and worked out, negotiated, heard, argued over, but it makes sense and it offers some protection. I think that what has to happen is in conjunction with us doing nothing I also believe that what Paul said needs to take place too and that is we need to go back and say, "You know, fine, it's not in affect. But you have to understand that the EPA does have a clock running on there and exactly what Senator Titus said is likely to happen and that is sooner or later this issue is going to get resolved. It's either going to get resolved because we come to agreement and the State of Nevada decides there is no easy answer, but this is the one that we've worked out, or if we can't find the guts to say that, then what's going to happen is either a court is going to say it, or the EPA is going to say it." And it strikes me as though that if we can find the courage and if that message could get delivered to the, not us, but if the legislature could find the courage to tackle the issue as we have done then perhaps we can still yet make the decision in the State of Nevada. But it seems to me that in fact if you have two sides that really, they talk a good game, but really aren't willing to come together and compromise and meet in the issue and let their politicians know that they're doing that then what they're inviting is that okay fine it's out of our hands. So, I would just ask if, I don't know if it needs to be an amendment to the motion or if it just needs to be understood to go along with the motion, that at the same time we're doing nothing as a Commission, you're definitely doing something as a Division to try and pass that message on and if need be I'm sure that there are members of the Commission who can speak from our perspective and say, "You know it's not as if we just tossed a number up there and ignored the status quo. That wasn't it at all." And if they have to hear that from the voice of some Commissioners, then I'm perfectly willing to do so.

Commissioner Iverson:

I think there needs to be a voice of this Commission to meet with this Commission and I think Allen can arrange that. But I think the voice of the Commission needs to come from, I mean we can all go, but I think the voice of that Commission, because of the politics behind this thing, and because we're in session, needs to be voiced by Fred and Mark and you and Demar Dahl who are from the private sector who can say exactly that. That this was not just numbers that we threw out in the air, that we went through nine hours of debate. We listened to all sides. And there are a lot of issues that need to be resolved here. But at least to make that attempt to resolve a problem or this thing will never get resolved and I'm really concerned what's going to happen in the next river system.

Commissioner Doppe:

Well, it won't get resolved by us, but it will get resolved.

Commissioner Iverson:

Oh, it will get resolved. And as far as working with people, I think our DEP has a reputation for working with our own constituents and our Nevada citizens and I think all of us including those at the legislature would much rather have Allen involved with this than having the federal EPA involved with this. I think our own, having primacy and having our own force working with these people is much better and I think somebody needs to express that. But more importantly, I think EPA understands that.

Comm. Crawford:

Is the motion intended that we not take any action and that this not be brought back to us? We don't want the Division to be working on this anymore and move on to the Humboldt?

Commissioner Gifford:

For clarification, the motion as I made it did not intend anything on Allen's part. If Allen elects to do something, fine. If he wants to invest another two years, that's fine.

But the motion did not include that. The motion is simply that at this point in time the Commission do nothing with petition.

Mr. Cowperthwaite: You're tabling this.

Chairman Close: No you're not.

Comm. Crawford: By tabling do we intend to have it brought back at some point in time?

Commissioner Gifford: If tabling infers that, I don't want that as part of my motion. Somebody else can make that a motion.

Chairman Close: I think what the motion is is that we take no action on this measure.

Commissioner Gifford: Yes. We've already done it.

Chairman Close: Petition 2000-10. We're taking no action on Petition 2000-10.

Commissioner Johnson: I have an additional question about the options that federal EPA can take, or more particular, what a court action on this issue, this in effect is not a violation for adopting inadequate standards, but it's the State of Nevada refusing to comply with the Clean Water Act and is there some potential for challenge of delegation of authority?

Ms. Wilson: No the water quality standards program is not per se a delegated program. The Clean Water Act lays out how the standards should be developed, the primary responsibility should be with the State. And then there's a provision within there that if the administrator determines that revised or new standards that are brought to us by the State are inadequate under the Clean Water Act or if they do not pass standards that the administrator feels are necessary to protect that water body, that we can promulgate standards. But it is not a delegated program.

Commissioner Johnson: So what we're looking at we're simply saying that we choose or were refused to take action on this and essentially give it back to federal EPA.

Ms. Wilson: And we would look at it and say, "Are standards necessary for that water body to protect it under the Clean Water Act that are not there."

Chairman Close: And so what if you said the only way you can protect Walker Lake is to put more water into the lake? What would you do?

Ms. Wilson: The goal of the standards are not to come up with an implementation plan per se for those standards. The standards are goals for that water body. Then if they don't meet those goals, then the State would list them as impaired and at that point then a strategy would have to be developed under the TMDL process to address that. It would not have anything to do with water rights. It would be another strategy. Whatever technology or whatever practices that they thought would benefit that impairment. So the standards per se would not be used for that. It would be a follow up.

Chairman Close: Any further comment?

Comm. Crawford: You know I think we did a very good job. We had an opportunity to be proactive on a collaborative play, the Commission's roll and a long collaborative process here and frankly we're going to blink and I don't think we have any choice because the 800-pound gorilla has spoken. But there will be another 800-pound gorilla in this before it's over. And as several have mentioned, we discussed this at the last meeting, Nevadans always want to take responsibility for their own actions and we don't want our federal brethren coming in and telling us what to do. And so we have an opportunity to be responsible here and take that action and we're not going to take it and we're not going to be allowed to take it. I think that's really unfortunate because the collaborative solutions for the health of the Walker River system I still believe are available to us. But the State's not going to take that opportunity and at the rate, as I mentioned, the TDS of Walker Lake has increased by 2,000 ppm while we've been talking about it. And it's not looking good, so I think, are we all willing for that lake to wink out on our watch? I guess we are and we don't have any choice.

Commissioner Ricci: Along that line with what Terry just mentioned, I'm not sure if there's any requirement for this Commission or Environmental Protection to send anything back to the Legislative Commission, but I think what should happen is there should be a letter addressed and probably signed by the Chairman that says, "Look we've done all of these things" and we had an opportunity, like Terry said, to do something and, you know, as politely as you can say, it's kind of like, "Well it's not going to be our fault if

anything happens, it's going to be your fault." Put the blame where it is.

Chairman Close: But the bottom line is, it's not any of our fault, but the fact is that river is over-appropriated and to the extent that it is and it's not going down to the lake, there's not much we can do about it. You need more water in that lake and if there's all these different categories of people who have litigated this thing now for 70 years and we're not blinking. It's not our responsibility to create more water. There is no more water to create. And you can set all the standards you want to set, but if there's not more water going into the river and it's not going to flow down to the lake, then there's nothing that's going to happen.

Commissioner Dahl: And everybody recognizes that it's a terminal lake and it's not our responsibility that it is.

Chairman Close: But I don't disagree with what you've said and I think we should write a letter back to the legislature or the counsel bureau and tell them what our position is. I don't disagree with that.

Commissioner Iverson: I go along with Fred's comments and his motion; however, I still want to, I think there is some reason and I think Terry brings it out a little bit, to sit down with this Commission and discuss the process that we went through and why those decisions were made. Terry brings up the point that we went through this. But if you'll remember the vote, the vote was swung by one vote. It was not unanimous on this and I think we could probably sit here all year long and debate the issue and Fred and Mark and Terry and Demar Dahl, and myself, we're all going to have different decisions and that's what makes the Commission so valuable. But it wasn't a unanimous vote and there's some real issues here. But maybe, I go along with that, but I definitely think there needs to be an opportunity for this body to sit down with that Commission and explain what we went through. And Mr. Johnson's shaking his head saying, "It won't do any good." I'm not so sure it will do any good, but I do think that it puts us in a position that someday if Allen decides to bring this thing back, that we've done the best we can do on it.

Commissioner Doppe: Could I ask a question of a Commissioner? Commissioner Johnson you have as much experience with the legislative body as anyone, what were they thinking? What were they wanting us to do? I mean what are they expecting to happen at this point in time?

Commissioner Johnson: I would hope not to answer that question and I've been quiet. At issue is the issue of upstream water and historically Speaker Dini has ably represented the interest of the agricultural community and this is in part to loyalty to the Speaker and appreciation of his ability to legislate and I shake my head at talking to this particular Commission. At this time they aren't really interested in dealing with this. They have budget shortfalls and time frames that are very short and in the next legislative session there will be a new Legislative Commission and we're going through reapportionment, which adds all to that. I think the tabling or not considering this proposal is from the standpoint of the legislature, we won't see anything from this legislature on anything that we do. So I think it's appropriate that we don't consider action. It's purely time-wise and if it were at the beginning of the session, I would say yes go talk to them and explain our process in the considerations. If there was an agreement with the Walker River Irrigation District, I could assume that there probably wouldn't be an objection from the Legislative Commission.

Commissioner Coyner: Allen correct my memory from the last Commission meeting, following the EPA findings or their promulgation they will list it as impaired and I believe there was testimony at that Commission meeting that we already have a fair amount of impaired streams and lakes in the State currently? And then to follow that, what's happened on those? I mean essentially the EPA declared them impaired and are water rights being sold and bought and property rights exchanging over those issues that are already in existence?

Mr. Biaggi: For the record, Allen Biaggi with Environmental Protection. Mr. Coyner you're correct in your memory that the major water systems in Nevada have some segments

that are impaired, every one of them. The Humboldt, the Carson, the Colorado, the Truckee. Most of those are impaired for nutrients: nitrogen, phosphorus and sometimes total suspended solids. And it's the State of Nevada that declares those that are impaired. What that does then is it triggers the TMDL process and many of our water bodies have TMDL's on them, probably the most notable is here in the Truckee Meadows in the Truckee River. Implementation plans are then established and best management practices are employed and other techniques to restore that water back into compliance with the standards. In some areas of the State we've been very successful with that. In the Las Vegas Wash in Lake Mead things have improved. Things have improved on the Truckee significantly. We still have areas where we need to work on other river segments elsewhere. So, what impairment does is it triggers the need for evaluation TMDL's and working on ways to get water quality back in line with the beneficial uses.

Commissioner Coyner: Is there a different process that would be followed when the State declares it impaired versus when the EPA declares it impaired?

Mr. Biaggi: The State would still declare it impaired given the water quality standards that are in place whether those standards were adopted by the State or by the federal government.

Comm. Crawford: I just wanted to clarify on the motion that we don't want to see it back again and the motion doesn't include any instructions for the Division to go do anything and it doesn't include us talking to the Legislative Commission. That's not in the motion?

Commissioner Gifford: That's right. It is not.

Comm. Crawford: I mean I think we've spoken on the science. The Legislative Commission has spoken on the politics and I think they know of our discussions and it's over and we're going to provide a new definition for a terminal lake.

Commissioner Robinson: Mr. Chairman a follow up on that as to what I heard and maybe it's relative to what Terry just said, I heard that we were almost in a position of asking Allen to maybe go over and negotiate which I think establishes probably a precedent that we wouldn't want to get into so that each time we send something over to them we were anticipating what they might do and that probably is not an area that, I don't think we want to get into that area. But if it's sending maybe just, are we going to send a letter then? Is that part of the motion, that restates what we did? Or is that not even necessary?

Commissioner Gifford: I think the letter would be a second motion wouldn't it?

Chairman Close: It's not in the motion.

Commissioner Doppe: Just to clarify, my only point in sending somebody back to these people is to let them know that what they have done in their infinite wisdom is to take a solution to toss in the trash and hand the decision over to the EPA. That's exactly the way I see what they've done, because they're not going to be back for two years. They're not going to address the issue for two years and that's exactly where they've left it. Two years from now this issue is going to be decided I think and they're going to come back to a set of standards that are already in place, more than likely us working on the implementation plan, which may be where we need to be anyway, I don't know. It probably is, but the fact of the matter is I sure wish it was us making the call instead of the young lady from San Francisco because I'm afraid that that's what is going to happen and that I didn't think, I'm not sure that they understand that. Now if they understand that, then we're wasting our breath and our letter.

Chairman Close: On the motion, all in favor?

Chairman Close: Aye.

Commissioner Coyner: Aye

Commissioner Dahl: Aye.

Commissioner Doppe: Aye.

Commissioner Gifford: Aye.

Commissioner Iverson: Aye.

Commissioner Johnson: Aye.

Commissioner Ricci: Aye.

Commissioner Robinson: Aye.
Comm. Crawford: No.
The motion carried.

Commissioner Gifford: I would like to make another motion if I may.

Chairman Close: Okay.

Commissioner Gifford: Would you make in terms of what you were proposing on your letter a while ago, if you're still in favor of it.

Commissioner Ricci: Actually, I misspoke a little bit earlier when I said send a letter to them to say that it's not our fault it's your fault. The letter should say, "It's not our fault. If anything happens, it's not our fault." So if you're asking me to make a motion I would make a motion to follow up with a very brief summary of all of the time that it took and to the point of where we are and the speculation as to what may happen as a result of our inaction with our concerns and just let it go at that and at least that puts it . . .

Chairman Close: Allen you can draft a good letter, you'll draft a very good letter and it will express our concerns and to let them know that this was a carefully studied, although it was a 4 – 5 vote I think, but it was a carefully studied matter and I think that Allen can draft a letter and I'll be glad to sign off on it.

Mr. Biaggi: Just for the process, so that I know, we'll go ahead and draft a letter and then submit it to the Chair for consideration?

Comm. Crawford: We haven't got a second on the motion yet.

Commissioner Gifford: I'll second it.

Chairman Close: On the motion, all in favor?

Commissioner Dahl: Wait for a discussion. Will you include in there . . .

Chairman Close: Do you understand that it's 1:00 and we're discussing whether or not we're going to send a letter?

Commissioner Dahl: Whether Allen is going to include in there that it was a 4 – 5 vote?

Mr. Biaggi: I will. And you know quite frankly, the Legislative Commission was aware of that as well.

Commissioner Dahl: I realize that they are.

Commissioner Doppe: All I'm thinking of is that it memorializes what the final step of this Commission has taken. If we don't send anything back to them, what does that say? It just says, "Okay we'll agree to anything you say. That's what happens."

Comm. Crawford: That's what we've done.

Commissioner Johnson: The point is that we have agreed to take no action and I don't think we need to explain that. I mean our action speaks for itself. We can say whatever we want to the Legislative Commission, we're going to get blamed at some point in time for not taking action.

Commissioner Dahl: It goes back to the fact that they're the elected representatives. We're just appointed. Is it really our place to say, "Hey, you did something dumb here?"

Commissioner Ricci: Somebody should probably say that, but probably not us. But, let me follow up though. I don't think that it's a bad, like you said, it's almost impossible to divine what their intention was, but I think that what we can say and I think what we should say is you know, "It came back on our agenda, we've spent 18 months working on it. We've taken testimony at two different locations, we consider no further action necessary."

Commissioner Doppe: I don't have a problem saying that because at least we looked at it and we're done with it and that's how I would say we're done with it.

Commissioner Dahl: We just did that with our vote, right?

Commissioner Doppe: Yes and I would tell them that.

Commissioner Dahl: Well didn't we just say that?

Commissioner Doppe: Well we said it to ourselves, but I would put it on the record in the form of a letter to them because apparently they're trying to tell us something.

Chairman Close: There's a motion to write a letter. There's a second to write a letter. Is there a vote? All in favor? The motion dies. We have a choice of going to lunch or we have a choice

of finishing this agenda. Is that a true statement Allen? Is that where we are?

Mr. Biaggi: Right.

Chairman Close: All we have left to go is just the settlement agreements.

Commissioner Coyner: We received no summary of the Division's activities last time because we got into a rush and we didn't even get a summary out of Allen (inaudible).

Chairman Close: So does that mean you want to go to lunch because you've brought donuts for us. I understand that. That was very nice of you and it's lasted us until 1:00. So is that the sense that you want to go to lunch and come back and enjoy ourselves this afternoon?

Commissioner Gifford: Another point is that I think last time we put off the notices of alleged violations and some of these go back to 2000 now.

Chairman Close: We cannot put off the violations. We have to handle those today. Go to lunch and come back at 2:00.

Mr. Biaggi: This is a bad spot for me to be in. Adele Basham, who I think all of you know has been a tremendous asset for the Division in our Water Quality Section and has worked hard not only in the Walker River standards, but all of our standards for many, many years and has been with the Division since 1987, will be leaving us and Adele will be going to the State Health Division to work on the drinking water programs under the grants and loans program. So, I would just like to have the Commission recognize Adele and have her stand up and acknowledge her hard work and her wonderful dedication to the Division since 1987 and wish her best of luck for the future.

Chairman Close: We're going to miss you Adele. We've enjoyed your testimony all your help all these many years.

Chairman Close: I'll call the meeting back to order. The next item of business is **Article No. IV Settlement Agreements.**

Jolaine Johnson: Good afternoon Mr. Chairman, members of the Commission, I'm Jolaine Johnson. I am the Deputy Administrator for the Division of Environmental Protection. Allen will give you some details on some concerns that we have for staffing, but I am a product of those concerns and am filling in for some of the compliance work in air quality due to numerous vacancies in that group. So, I'm here today to present the settlement agreements that the agency has come to with various regulated industries regarding violations of the air pollution control laws. Starting with the **Priske-Jones Company**. This is a land development company. They were developing High Country Estates. It's a subdivision in Fernley. Due to a fugitive dust complaint that we received from a neighbor of this area, we inspected the facility on September 8th. We did not observe dust when we visited the site. However, on further review of the site we determined that they did not have a permit, the surface area disturbance permit for those operations which are required for any disturbance of areas over 5 acres.

The facility had started excavating about three months before our inspection. We issued Notice of Alleged Violation No. 1459 because a permit had not been obtained, but a permit has since been obtained, and they are now in compliance with the rules. The penalty was based on a major deviation from the regulations in that they did not have a permit for this operation. A minor potential for harm, we did not observe any emissions. We established a base penalty of \$600 rather than a daily basis, we put that on a monthly basis multiplied it by the three months that they've been operating and settled on a penalty of \$1,800. We recommend that this Commission ratify the negotiated settlement at this time. I'd be happy to answer any questions.

Commissioner Gifford: Fred Gifford for the record. And so how many acres over the 5 had they disturbed?

Ms. Johnson: I do have that information here. I believe that they were not much over the 5 acres, about 7 acres when we inspected.

Chairman Close: Any questions? Thank you. Does anyone wish to testify in this matter that's in the audience? I'll declare the public meeting to be closed. Is there a motion?

Commissioner Gifford: I'll move that we accept NOAV 1459.

Commissioner Iverson: Second.

Chairman Close: There's a motion and a second. All in favor?

The motion carried unanimously.

Ms. Johnson:

The next item on the agenda is **CB Aggregate**. This is a crushing and screening facility located near Gold Canyon north of Dayton. On July 27th we performed a scheduled inspection at this facility and during that inspection we noticed, or we observed 100 percent opacity emissions from three separate emission units operating at that facility. The permit limit for each of those units is 20 percent opacity. So, we noted violations in that case. We noted that problems on that day were due to very dry materials and insufficient control. They simply were not adding controls to reduce the dust emissions from those operations. Three NOAV's were issued, one for each of those emission units. Those are NOAV's 1461, 1462, and 1463. On reinspection of the facility on August 25th we confirmed the corrective action measures that they had taken and they had installed adequate controls at that point to reduce those opacity emissions to the regulated requirements.

In considering a penalty for these violations we considered it a major deviation from the regulatory requirements. It indicated a moderate potential for harm. There were high emissions coming from this facility, low toxicity and there was a fairly low public health risk due to the remoteness of the location of this facility. We negotiated for this a \$3,600 penalty for one day and therefore a total of \$3,600 with no adjustments.

Chairman Close:

Any questions? Any comment from the audience? Is there a motion?

Commissioner Ricci: So moved.

Commissioner Doppe: Second.

Chairman Close: There's been a motion and a second. All in favor?

The motion carried unanimously.

Ms. Johnson:

Mr. Chairman the third item for your consideration is a violation by **A & K Earthmovers**. They operate a crushing and screening plant and they develop land for future subdivisions. They were excavating a 13-acre site in Fernley and on September 26th we performed an inspection there. That inspection had not been scheduled, but the inspector noticed the disturbance as she was on her way to another scheduled inspection. On subsequent file review we found that this facility did not have a permit for the surface area disturbance of the 13 acres. Again, those permits are required for anything greater than 5 acres.

During an enforcement conference on October 1st, or excuse me, October 4th we determined that this facility had operated, or this disturbance had operated for two months prior to our inspection. NOAV 1465 was issued and since that time a permit has been obtained for this operation. The penalty was negotiated on the basis of the major deviation from the regulatory requirement, a minor potential for harm. We did not observe emissions when we were on site that day. Base penalty of \$600, and again we applied that on a monthly basis for two months. We added a 25 percent factor for past history of noncompliance. You do have in your package indications of their compliance history from the years 1999, 1997 and 1995. And we came up with a total negotiated penalty of \$1,500 for this violation.

Commissioner Gifford: Fred Gifford for the record. Twenty acres on this one?

Ms. Johnson:

This one was a 13-acre disturbance.

Chairman Close:

Any comment from the audience? Is there a motion?

Commissioner Iverson: I move that we ratify this settlement agreement.

Chairman Close: Is there a second?

Chairman Close: You've heard the motion and the second. All in favor?

The motion carried unanimously.

Ms. Johnson:

The next is **Rees's Enterprise**. This is a portable crushing and screening operation. They have various locations throughout Nevada. This facility did have a COLA for a temporary facility in Mound House. COLA is a Change of Location Allowance. On October 6, 2000 an inspection was performed. We stopped to do that inspection on the way by to another

inspection an observation of emissions from Highway 50 were observed at this facility. A 23 percent opacity was measured over a 6-minute period from a conveyor out of the jaw crusher. That was mostly dust. The permit limit on that facility is 15 percent. During an enforcement conference it was determined that the problem was due to dry material being excavated and inadequate controls being operated on that facility. NOAV 1468 was issued on October 9th. A reinspection occurred and we confirmed compliance with the requirements. At that point corrective action had been required to have a plan submitted to perform their own visible emission readings at facilities on a more regular basis. Penalty negotiations were based on a major deviation from the regulations. A minor potential for harm. There was a low release, low toxicity and low health risk. The base penalty was calculated at \$1,200 per day, one day of violation. There was a 50 percent factor added for history of noncompliance. Again, you'll find their compliance history in your packets with violations previously noted in 1997, 1996, 1995, etc. So we added a 50 percent factor for that history and came up with a total negotiated penalty of \$1,800. Again, we'd recommend ratification of that negotiated settlement.

- Chairman Close: Any questions?
- Commissioner Iverson: I have a question and I could have asked it on any one of these at any month, but I guess I just forgot to ask it until you (inaudible). When you talk about a conference committee and that you, now this is a settlement, your conference committee I assume are people in your agency who go through your checklist and determine what the fine should be?
- Ms. Johnson: The enforcement conference that we speak of here is a conference between our compliance staff and representatives of the regulated facility. That is an opportunity for that facility to explain to us what has been going on there so we get all the information that we need to really determine whether this warrants a Notice of Violation. At that point, some negotiations carry forth. However, we really calculate the penalty later and present that to them shortly after that enforcement conference.
- Commissioner Iverson: So during an enforcement conference it's not, you don't necessarily go in and say, "Here's what we could fine you." You negotiate this down to a fine that both of you accept?
- Ms. Johnson: Depending on the past history of the source sometimes we do go in there saying, "Here's what we could fine you up to \$10,000 a day for a violation."
- Commissioner Iverson: Okay, the settlement, have they accepted these? Have they said, "Yeah, this seems fair?"
- Ms. Johnson: Yes. Before we come to you with a recommendation to ratify a settlement they have accepted the terms of that settlement. I believe David, they've signed those documents?
- Mr. Cowperthwaite: Yes. (inaudible)
- Chairman Close: Any other questions?
- Commissioner Ricci: This has kind of intrigued me now. Do they request a settlement conference? Do they think that they shouldn't be fined or shouldn't get a Notice of Violation? Is that why they have a settlement conference?
- Ms. Johnson: No. We hold an enforcement conference routinely. It is a part of our enforcement process and again, the purpose of that, we call them into the office to provide them with an opportunity to provide us with all the information we need to actually make a decision. Sometimes we come out of those conferences believing that they didn't have control over the situation or for whatever circumstances a violation isn't warranted.
- Commissioner Iverson: Do they always come when you ask them to come in and . . .
- Ms. Johnson: I believe they always have, yes.
- Commissioner Iverson: That's great. Okay.
- Chairman Close: Any other questions? Any comment from the audience? Is there a motion?
- Commissioner Gifford: I move to accept NOAV 1468.**
- Chairman Close: Second?**
- Commissioner Doppe: Second.**
- Chairman Close: You've heard the motion and the second. All in favor?**
- The motion carried unanimously.**
- Ms. Johnson: The next item is Frehner Construction. Frehner operates portable asphalt plants around the State. They have a Change of Location Authority for a temporary facility located in Mound House. On October 6th of 2000 an inspection was performed and, again, this was due to

observations of emissions from Highway 50 as our inspector was in the area.

During the inspection it was observed that 30 percent opacity was coming from the bag house for the asphalt drum dryer. There was a blue smoke-type emission from that unit and the permit limit on that unit is 20 percent. During the enforcement conference it was determined that the exceedence of opacity was due to product composition changes, the location of the oil injection point and the smoke point of the supplied oil. NOAV 1473 was issued for violating the permit limit. Corrective action and a penalty have been negotiated.

Corrective actions that have been agreed to include the designation of environmental managers to insure environmental compliance. Those managers will conduct a compliance evaluation during initial or test production, operations, startup and make necessary adjustments prior to full production. So, that should resolve the concern that they have the wrong oil and that there may be some problems with the way the facility is set up. They also will increase facility inspections whenever product composition changes are made. A penalty has been negotiated for this violation. We based the penalty negotiations on a major deviation from the regulatory requirement, moderate potential for harm. There was somewhat of a low volume, medium toxicity, there were gaseous emissions in addition to particulate emissions from this facility and a medium health risk.

Based on those criteria, the base penalty was \$3,600 a day. We have adjusted that by 105 percent for past noncompliance history. Again, you have the details of the compliance history for Frehner Construction in your packets. For a total penalty negotiated of \$7,380. There is a representative from Frehner here today if you have questions of him or certainly I'd be happy to answer any questions about this enforcement action.

Chairman Close:	Any questions?
Commissioner Coyner:	The adjustment factor is at 105. Is that the maximum?
Ms. Johnson:	I don't believe so. There are ranges for certain types of violations and so forth, but for things like degree of cooperation there aren't limits on how much that increase is generally, we talk in the order of 25 to 50 percent. Mitigating factors we can take into account and we will use whatever we think is appropriate in that case.
Commissioner Coyner:	So the 105 is a sum of several factors . . .
Ms. Johnson:	It is.
Commissioner Coyner:	And it comes up to a total percent that then is multiplied.
Ms. Johnson:	Exactly. It also can be based on, we also base it in the number of previous violations within the past five years. So, I think that's probably what has brought these numbers up so high. They certainly have been cooperative with this compliance.
Commissioner Dahl:	Did you say five years?
Ms. Johnson:	Yes.
Commissioner Dahl:	But you go back to 1988?
Ms. Johnson:	That's the history for your information. But in our calculations, let me verify this, history of noncompliance, we have a, for 5 percent had there been similar violations to this one in the past, was their most recent violation in the last year, within the last five years, and then the number of violations we multiply the number of previous violations by 5 percent. And, actually, I'm sorry, I misspoke, it doesn't say within five years.
Commissioner Ricci:	Jolaine, is this environmental manager that currently was agreed upon the same type of one that Granite was talking about?
Ms. Johnson:	It is. Very similar.
Commissioner Ricci:	But there's going to be one of these places then, correct?
Ms. Johnson:	No. There isn't going to be one at each location and I would allow the man from Frehner, the representative at Frehner to speak here. I believe they're setting these people up on a regional basis to be able to go around to their various facilities in the region.
Commissioner Coyner:	Demar touches on an interesting point though. If it's 5 percent times all of their previous

violations, so if they have 10 violations, it would be 50 percent.

Ms. Johnson: Yes.

Commissioner Coyner: For that factor. And you add some other percents from others and you come up to 105. They'll never escape the previous violations. They'll never be mitigated for that.

Ms. Johnson: Unless they stay in compliance today and we don't have to look back at those.

Commissioner Coyner: Forever, I mean 50 years from now that percent will just keep going higher based on every violation they've ever had.

Ms. Johnson: I have clarification from the staff that know what's going on that we only look at the last five years.

Commissioner Coyner: Okay. Or else you'd be haunted forever.

Chairman Close: Any other questions? Any comments from the audience? Anyone here from Frehner that wants to speak? Is there a motion?

Commissioner Iverson: I move that we accept this and ratify this action, the settlement agreement.

Chairman Close: Is there a second?

Commissioner Johnson: Second.

Chairman Close: You've heard the motion and the second. All in favor?

The motion carried unanimously.

Ms. Johnson: Okay and the last item on this agenda item is **Round Mountain Gold Corporation**. This facility mines and processes gold-bearing ore rock for the production of gold. The Smokey Valley Common operation is located up a dead-end canyon just northeast of the old town of Round Mountain, Nevada.

The NDEP reviewed reports submitted by Round Mountain Gold on January 5th of 2001 and January 17th of 2001. These were excess emission reports sent to us by Round Mountain Gold Company, as required by their permit. The January 5th report stated that on January 4th the facility night shift operator disconnected the primary crushing systems' bag house and continued to operate for 7 hours. So, that was definitely an intentional effort to bypass the control system. The January 17th 2001 excess emission reports say that on then on January 16th the night shift operator of the truck dump system operated without the required water sprays for 8-1/2 hours and in addition for 15-1/2 hours on January 16th and 17th the system II radio stacker operated without their water sprays. These are all in violation of both their permit condition and State law that requires facilities to operate the controls listed in their permits.

On January 30th an enforcement conference was held to discuss these violations. Round Mountain Gold provided documentation that the permitted throughput limits were not exceeded and the excess emissions from each event did not exceed the national ambient air quality standards. So they did an evaluation of the emissions that would have occurred while these controls weren't in effect and determined that it would not have caused a violation of the ambient air quality standards.

Notice of Alleged Violations 1508, 1510, and 1511 were issued for these violations, prohibitive conduct. And Round Mountain Gold has shown us that they have a clear policy and procedure that prohibits operating air pollution equipment without those required controls. They took appropriate reprimand action against the employees that by-passed these controls. These violations represent major deviations from the regulations and a minor potential for harm. A base penalty fine in the amount of \$1,200 per day for one day of violation was determined. We adjusted that down because they self-reported these violations and that resulted in a \$1,020 penalty for NOAV 1508. Similarly, a base penalty in the amount of \$800 was adjusted down by 15 percent to \$680 for NOAV 1510 and for NOAV 1511 a base penalty of \$1,800 for two days was determined and, again, adjusted down 15 percent for self-reporting. This brings us to a total for these three violations agreed upon settlement of \$3,060. They generally have a good compliance history. We haven't had a lot of difficulties with this facility along the way.

Commissioner Iverson: They just had some problems with their night shift.
Ms. Johnson: They did have problems with their night shift.
Chairman Close: Any questions? Any comment from the audience? Is there a motion?
Commissioner Iverson: So moved.
Chairman Close: A second?
Commissioner Ricci: Second.
Chairman Close: You've heard the motion and the second. All in favor?
The motion carried unanimously.

Chairman Close: **Item No. V Review of Commission Rules of Practice.**

Mr. Cowperthwaite: For the record my name is David Cowperthwaite, Executive Secretary for the State Environmental Commission. Pursuant to the Administrative Procedures Act, there is a clause that requires that a review be done of the Rules of Practice of any particular agency who is included within the context of NRS 233B which is the Administrative Procedures Act. I'm going to read into the record here Item D of the Administrative Procedures Act of what it is. It is 233B.050(d) "Review its Rules of Practice once every three years and file to file with the Secretary of State statements setting forth data in which the most recent review of those rules was completed and describing any revision made as a result of the review." At this point I have presented to you, you should have before you the Rules of Practice. The Rules of Practice for the Commission are very short. I've agendaized them as an action item if you believe that there needs to be some revisions somewhere, but at this point I've gone through these rules and at this point I don't believe that there needs to be any updates done to them. But I'm certainly open-ended to if it needs to be done is preparing the permanent regulation. Our last review was done as of July 1, 1998. So the three-year clock is up at this meeting and the purpose of this is to write back to the Secretary of State telling him whether in fact action, the review has been completed.

Chairman Close: Susan are you aware of any necessarily of changing our rules?

DAG Gray: I haven't seen them. I have reviewed them before though. I haven't ever seen any problems in my review in the past.

Mr. Cowperthwaite: There have been brief areas that we've had that we had to deal with them we had a hard time trying to grapple with was the issues of subpoenas and this was the matter of Nevada Slag in which we were under that tight 20 day slot. Nevada Slag was essentially dissolved and with by the Bureau of Air Quality. So that's what that dealt with. And what happened is we sort of ended being jammed to on the issue of having subpoenas being requested and so we had to go through this process of trying to get past this. Subpoenas is sort of an area that could eventually, I guess, require work. And I think one of the issues we had was if I have to go and serve it, in this case it was out there in Ely, you know to be able to make that subpoena effective, you've got to serve it. And so you've got to give it to somebody to serve it and especially if you're dealing with rural counties being able to have somebody be able to process it. It can be a very difficult process because you have to go to the sheriff and you have take money out of your budget to be able to do that. We did sort of issued subpoenas, but you know they were not really defined in the documents in the sense that they were not served correctly. But all the parties in this case, they were public officials who were in fact served who were all more than happy to be compliant with the subpoena and we probably didn't even have to serve the subpoenas, we probably just sort of had that and requested them to be opposing counsel the one is that subpoena (inaudible) the Commission will (inaudible) so we are trying to satisfy the (inaudible). So that was the only area in which I had sort of an issue in terms of reasonable in terms of the Rules of Practice and how to be able to deal with that. Plus, who is to issue the subpoenas is another issue too. That's not clarified by the regulations. In this case we had to share who went forth and initialized and executed the subpoenas for us.

DAG Gray: And I think the problem at that time was they did comply with the five days, but I think it fell on a weekend and so therefore there wasn't enough time to get these subpoenas out to, was it Ely?

Mr. Cowperthwaite: Yes. That was in Ely. Part of the issue here is that under the statutes we're under a 20 day clock due to hearings that puts a real crunch to be able to organize a hearing and get all the logistics in place and then also pull in and do activities like this. So it becomes a real crunch, a real scramble to be able to make that happen.

Chairman Close: I don't see how you can give less than five days notice. I mean I think that's very minimum.

Mr. Cowperthwaite: As well as the public notice too. You're also pushing out a public notice at the same time that has requirements for five working days?

DAG Gray: This actually says five days prior to the hearing.

Mr. Cowperthwaite: Five days prior to the hearing.

DAG Gray: Which the questions have been raised whether the person that you subpoena would even have an obligation of showing up because you know they say you could have reasonable notice in order to have to comply with subpoenas.

Chairman Close: I think five days is as least possible time you could have. I don't see how you could reduce it down from that. And I think you've got to get it served however you've got to get it served, if it's the sheriff or whoever. You've got to have it personally served.

Mr. Cowperthwaite: So those were my only comments regarding this. Again, unless there's any comments, what I will do is I will prepare a letter for the Secretary of State telling him that the Commission on this date has gone ahead and reviewed the Rules of Practice. I mean certainly if you want me to try to get back to them (inaudible).

Chairman Close: So if they work well, unless Susan sees something by the next meeting, you don't need to look at them now, but if you see something by the next meeting that you think we should modify then we'll do so. Otherwise, I think you can give your certification.

Mr. Cowperthwaite: Okay, then we'll start the three-year clock over again.

Chairman Close: But then you can look at it and see if there's anything you think we should modify. Give you a chance to look at it at your convenience rather than right now.

DAG Gray: Right. I mean and just from the past and my review of them from the past in applying them I've never seen problems, but that doesn't mean that in fact under a close review something won't come up.

Chairman Close: Okay.

Commissioner Coyner: Since I was involved in that little time crunch, if you were to change it from 20 days, what would you suggest? If 20 days seems to present a . . .

Mr. Cowperthwaite: Well if we were to go back and open the statute I would say you could do a hearing in 30 to 45 days, 45 days being bringing together all of the parties and making it happen would be much more efficient than the 20 days. Thirty days is the base. That rule then is imbedded in statute and that's not . . .

Chairman Close: What section is that?

Mr. Cowperthwaite: That is . . .

Chairman Close: 891?

Mr. Cowperthwaite: I think . . .

Commissioner Coyner: NAC 445B.891. "The secretary to the Commission will schedule a hearing to be held within 20 days after receiving a request for a hearing."

Mr. Cowperthwaite: And the foundation of that is in statute.

Chairman Close: Is that required by NAC?

Mr. Cowperthwaite: NRS

Commissioner Coyner: NRS

Chairman Close: NRS requires 20 days? So there's nothing that we can do about that. We could request I guess a Bill Draft and suggest there be more than, of course this applies to every State agency right? Not just to us?

Commissioner Coyner: Everybody's got their 20-day clock?

Mr. Cowperthwaite: I would have to go back and look at that. I think that it was distinctive to the functions of the Commission and it was embedded, if my recollection serves me, in 445B which is where the source of authority for the Commission resides. The Commission is sourced out of the Air Pollution Control statutes because those were the first ones that were the foundations for the creation of the Commission.

DAG Gray: I think that because this was a violation, it's specific to whatever agency it is. I know some

other agencies are 30 days. If it was a petition for a hearing, that would be 30 days under the APA.

Chairman Close: Then what you're suggesting then is that maybe for the next session we could request an extension of this 20 day time limit?

Mr. Cowperthwaite: To broaden it to a little bit further and certainly take, allow the tension off of it. What the practicality of it is that we have found is that in a very, very rare circumstance will everybody be able to come to the table. I mean physically come to the table to be able to get the opposing counsel, to be able to get the State's counsel, to be able to get the Commissioners and everybody all lined up to be able to make that happen within a 20 day period becomes a very challenging thing. It gets to be done, it needs to get done. But generally everybody is willing to back off and recognizes that and then we're able to slog in and make it happen, not get it so it's bumbled (inaudible).

Commissioner Doppe: Continuances are allowed you know.

DAG Gray: They're generally asked for.

Commissioner Doppe: Yes. So if they ask for it, it's permitted. Has anybody ever asked to go outside the 20 days?

Mr. Cowperthwaite: Well in this case the Nevada Slag one. And we've had some in the past where they've gotten in a really hurry to be able to make that happen. Generally, what will happen is the closer, by the time you get to the hearing nobody's prepared to be able to do it. The State generally is prepared, but the opposing counsel never gets prepared. So then it begins. All of a sudden, I mean there's a light bulb that goes off somewhere, somebody figures out this is not going to happen. It is not working right now, so they generally back off. The provision there is in NRS 445B.350 "Appeals for Commission hearings to 20 days after receipt of notice of appeal provided in NRS 445B.340 the Commission shall hold a hearing. Notice of the hearing shall be provided to all parties no less than five days prior to the start of the hearing." And you can sit in three's, panel of three's and then it goes on from there.

Chairman Close: So then I would think then to make it easier for everybody we ought to ask for an extension of time. We can do that at the next session. So I think put that on your agenda and . . .

Mr. Cowperthwaite: Is to be able to prepare them (inaudible) that kind for continuances? Or (inaudible) 30 day base clock for a hearing?

Chairman Close: 30 days.

Commissioner Doppe: 30 to 45 just to begin with.

Chairman Close: You know, whatever is reasonable and then ask the legislature to modify that rule.

Mr. Cowperthwaite: Okay.

Chairman Close: Next term.

Mr. Cowperthwaite: Next go around.

Chairman Close: **Item No. VI. Status of the 2001 Legislative Session.**

Mr. Biaggi: Mr. Chairman, Commission members, my name is Allen Biaggi with Environmental Protection. You should have in your packets a handout that has a little matrix on it. These are the bills that the Division of Environmental Protection is tracking that has direct implications to its programs. On our, we have a much larger list of all things that we're interested in and I don't know, David, there's probably what, 45 – 50 bills on that one?

Mr. Cowperthwaite: Some of them dealing with the Open Meeting Law, things like that. But we'll wait until they process through before we talk about this internally.

Mr. Biaggi: So these are the bills that have direct impact to the Division of Environmental Protection. I just want to point out a couple of them that I think of are particular note. We talked a little bit this morning about SB 362, which is on the bottom of the first page and this consolidates and revises processes for reviewing applications for permits, licenses, and other approvals required to construct certain utility facilities and this is an attempt to streamline the permitting process for electrical generation facilities. Hugh and Mike Turnipseed and I are working with bill sponsors to the extent that we can to recognize the unique situations that are involved with permitting from an air quality standpoint and then from a water right standpoint from the State engineer. So, hopefully we can get that reflected in the bill. The other one I wanted to quickly point out is Senate Bill 534 which is half-way down the second page. And this is a bill related to the air quality concerns in Clark County and what role the State of Nevada should play in overseeing local air quality air programs. There's

a number of provisions in this bill which would, insert the State into the local air programs from the perspective of regional haze, from SIP preparation, from priority identification for funding, for the development of incentive programs for alternative fuels, for the development of a program for repair of high emitting vehicles and it goes on and on and on. Obviously, this cannot be done with the existing resources we have in the Division and we've prepared a fiscal note and Jolaine and Colleen have been very active in not only this bill, but all the air bills from Clark County. Colleen's estimate on the cost of these programs range to anywhere from about \$900,000 to something in excess of \$3 million. And obviously we all know that there's about a \$121 million shortfall in the budgets right now. So there is a high likelihood that this bill will be substantially reduced if not completely gutted in order to make it not have a significant fiscal note and we're going to watch that carefully and work with the legislative staff and bill sponsors in order to get an acceptable version of that.

If you'll notice on this listing of the 15 bills that are on here, 9 of them are air quality related. So that has been the major focus of the Division's legislative efforts at this session and I really want to recognize Jolaine and Colleen because they have really come to the plate and done a lot of work in working off the legislative session with the SB 432 committee which was overseeing the Clark County air regulations and now that the session is in place, dealing with this myriad of bills that are before us concerning Clark County.

On the Clark County issue, just to deviate from legislation a little bit, I think there's some positive things going forward. Christine Robinson is now the director in Air Quality for the county. She brings a very strong breath of fresh air in credibility, integrity, enthusiasm and I think she is on the right track of getting that program back into place and that's also been recognized by the legislative body as well. So with that I'd be happy to answer any questions you may have on legislative issues.

Chairman Close:

Thank you Allen.

Commissioner Johnson:

Well, I dare, it just comes to mind that some years ago we took action on the Las Vegas Valley Wash. What's the progress of the restoration of that body?

Mr. Biaggi:

That's a good point. The Las Vegas Wash, let me start, on my birthday of this year I went down to Las Vegas, participated in the opening of the Clark County Wetlands Park and that's one piece of a larger overall plan to address the erosion and water quality issues of the Las Vegas Wash and Lake Mead. Right now three erosion control structures have been installed at the Wash. They're backing water up nicely, recreating wetlands, dropping out silts and sediments, and the very necessary first step in the total of what Tom, 15 total erosion control structures that will also maybe put in in that area. Also, this wetlands park creates a tremendous amenity for recreation, walking paths, wildlife habitat and other things. And so I think things are progressing down there very well, very nicely. And I'm very happy with the progress that's ongoing and I think the thing that I'm really heartened to see is that local, state, county and federal agencies are now working together and not butting heads like they were five years ago.

Chairman Close:

Any other questions? Thank you. You're at Programs and Policies.

Mr. Biaggi:

Very quickly on this one. I haven't reported to you for I think three meetings actually on some of the things going on at the Division. So, I wanted to bring you up to speed on that. First our budgets with regard to this legislative session in Fiscal Year 2002 and 2003. The Governor mandated that no new programs, no new fees, no new taxes. I'm happy to say that we have complied with that and as you heard today there's actually some programs that have actually reduced or dropped their fees. With that said, we have asked for four new positions within our budgets for these next two years. We asked for a new bureau chief for Air Quality. This is our largest bureau right now within the Division. It has a staff of 30 – 31 people and Colleen is I think stressed to the max. Her workload is about as high as someone can get. She has handled that stress level very well and is doing great job with the workload, but we would not like to burn her out and so we're asking for a bureau chief and break off

the air program, just like we did the water programs about 10 years ago. So it will be into a planning function as one bureau and then a regulatory and permitting function into another. So that's what this new bureau chief position will do. We're asking for a new person for our Information Management Systems. The Division has an extensive computer system. We have obligations to report to federal agencies, state agencies, etc. on the things that we do. More and more of our accounting functions are going to a computerized system and we need some additional help with our information management services. We're asking for a new accountant because of the burdens that are being placed on us on the federal and state levels in terms of accountability for our money. And then finally we're asking for a new position with our State revolving loan fund in our injection control programs in Water Pollution Control. It looks like all of our budgets have passed committee with the exception of one and that is Budget Account 3187 which is our Waste Management Bureaus, Corrective Actions, and Federal Facilities. That budget account we're transitioning into special use categories and some of the legislators on the Assembly side had some concerns with transitioning because it was a very complex budget account into that form of cost accounting. So what we find ourselves in with 3187 is that it has passed the Senate side, but it has yet to pass the Assembly, so I think in probably the next week or two we'll be going to a conference committee to get that resolved. I don't see that as a major stumbling block. So, any questions for me on our budgets?

Moving on to staffing, it's a very significant concern to me right now. We're seeing a tremendous turnover within the Division as we're seeing in many other agencies within State government and one of the primary reasons for that is because of compensation and retirement and benefits and that sort of thing. I don't think it's any secret that State employees are lagging significantly behind their counterparts in private industry and local governments. This concern is the greatest in our Bureau of Air Quality where we have recently lost three of our four supervising managers in the program. That's why Jolaine was up here. Eric Taxer has moved on to a local government position in the State of California. We have also lost a senior permits writer in our Air program. Right now we have 12 open positions within the Division. The majority of those are engineers and environmental scientists. So it's a great concern to me and I know it is to other administrators and we're heartened by the support the Governor has shown towards State employee raises which I think will help reduce this loss that we're having to local and private industry.

Electrical generation is a grave concern to us. We've talked a little bit about it today and this has the greatest potential impact to our Bureau of Air Quality and, again, because of our staffing reductions in there it has placed that bureau under a tremendous amount of strain. We are seeing a number of proposed generation facilities coming to us for information over applications. Additionally, we're seeing power generators that are already in place at mines, at hospitals, casinos, etc. asking for modification of their permits to operate more often or to operate with different or alternative fuels. We're also having a request from the Mohave Generating Station to once again review their opacity variance which this body heard twice last year in order for them to generate more electrons during times of electrical emergency. So, the Division is taking a high priority for these electrical generation issues. The Governor has stressed to us in no uncertain terms that we are to make them a priority so automatically electrical generation facilities go to the top of the list. As a result, however, other facilities are falling to the wayside. We're getting pressure from the mining industry and others that they need their permits as well and so we're having to balance this workload. We're trying to address our resource concerns by bringing on some independent contractors to help us out with permitting. Looking to EPA to maybe get us a little bit of grant flexibility and to focus some of our energies and some of our resources into these priority areas and in other ways in order to not only address the electrical generation concerns, but also our permitting backlogs.

With regard to the Mohave Generating Station, Jolaine went out to a meeting a week ago last

Monday in Laughlin to a town board meeting. There's quite a bit of concern of some of the residents of the Laughlin area with regard to potential health impacts of this variance and we're awaiting right now the Southern California Edison to provide us with a variance that they wish to go forward with the opacity considerations. As of yet, we haven't received that. We're questioning now maybe their feeling that maybe that's not the best avenue for them to go given the concerns in the communities. We hope that if a variance does come forward it will come forward soon so that, Dave, you've got one?

Mr. Cowperthwaite:
Mr. Biaggi:

No, but I'm getting signals that they're going to go for it.

Once we get that variance we are going to schedule a meeting in the town of Laughlin in order for this body to hear that. I'm sorry about having to go to Laughlin in June, but I think we really do need to be responsive to the citizens of the area and have the meeting out there where you can hear their concerns first hand, rather than by telephone like we did it last time. Any questions with regard to Mohave or electrical generation?

Commissioner Coyner:

Allen are they still on schedule as I recall when we talked with them during the air fee increases they testified that they were going to install extensive pollution control equipment which would lower their emissions, which would then reduce their fee and they are the largest fee payer in the State. Are they still on schedule with that sort of a plan that they had put forward?

Mr. Biaggi:

They are on schedule and they have to remain on schedule because that's a court-ordered requirement that they put those emission controls on. And this is something that we put into our budget and have tried to make the legislative body well aware of, that next session we're going to have to come forward with some revised revenue sources in order to make up the shortfall that we're expecting by 2005, 2006 time frame.

Commissioner Coyner:
Mr. Biaggi:

Will it ultimately make these opacity variances not needed?

Ultimately it will, yes. I touched a little bit on the Las Vegas air quality issues. Some of the very positive things that are going on as I mentioned is that they have a new air quality director, Christine Robinson on board. There's a bill before the legislature to consolidate Clark County Health District's Air Quality program and Comprehensive's Air Quality planning programs, which I think will be a great step forward and have one consolidated air program rather than two disjointed parts. There's a proposal for fee increases to help fund that agency and we have started an air quality forum in the Las Vegas area. In fact, Paul was at our air quality forum this week, where we try and bring together all of the federal, state and local officials, as well as the public, to discuss these very difficult air quality issues in the Las Vegas basin and try and get people to talk and work together. It's a format similar to something we did about three or four years ago with water quality and it's been very successful in bringing people together. So, we're going to continue that effort and Jolaine has been heading that up. Any questions on Las Vegas air?

Okay, a couple of updates on some of our legal actions that we and you have pending. First of all, there's Jarbidge. As you'll recall this is something that has been appealed to the State Supreme Court; however, the Division and Elko County have been talking about ways to modify the regulations to make it acceptable for all parties and address the concerns of Judge Wagner and avoid a prolonged litigation. We had a conference call with Elko County officials this week and we'll be meeting with some of their representatives in the next couple of weeks in order to continue down the path of crafting an acceptable regulation to all parties to bring before this body in the future.

Western Elite, which is the big trash pile out in Lincoln County, I'm happy to report we've reached a settlement with a new operator about two weeks ago. We still have to sign that settlement, but I'm hopeful that this new operating entity will be able to reduce the 750,000 cubic yards of waste out at that facility and begin to recycle and make a usable, viable, economic product out of it. The gentleman's name is Scott Seastrand, I believe, and his father, I think his father was mayor of North Las Vegas at one point and has been working with us over the last six months or so in order to get this settlement agreement reached.

We have a very large case going on. It's called Robert Hager versus NDEP. This is a result of Mr. Hager, his lack of commitment and lack of action in the clean up of an underground storage tank release at Lake Tahoe. The Division of Environmental Protection, through the State petroleum fund, has undertaken that cleanup and has expended about \$800,000 in cleaning up that facility. Many of you know the Lake Tahoe area will know this is the Manny's Cave Rock facility. So it's got a long and checkered history of environmental problems. We have attempted to settle this case, but I don't think settlement is going to be fruitful. And we're scheduled to go into Douglas County Court I believe on June 10th in order to hear this case. I'm fairly confident that we will prevail in that one.

And finally, 3809, these are the hard rock mining rules that were initiated by BLM under the Clinton administration. The State of Nevada, through the Division of Environmental Protection, the Department of Minerals, the Attorney General's office, the Governor's office, issued an action against BLM for some of the provisions of 3809. The Bush administration has since pulled those back and asked for reconsideration of them. That did not waylay the State's actions, however, and that lawsuit is moving forward. Any questions on legal actions? Al did you have anything you'd like to add on 3809? Okay.

A couple of other things, Fallon, as we all know, has a very serious cancer cluster that is a very tragic situation and our office is not directly involved in that. That investigation is ongoing through the State Health Division. But we and Health have exchanged files. We've given them outlines of everything we permit in the Fallon area from a water and air perspective. We participated in Marcia DeBraga's hearings early in the legislative session concerning this issue and two weeks ago the Division met with the Agency for Toxic Substances, Disease Registry and the Center for Disease Control on their investigative activities with the Fallon cancer cluster. So, as information is needed the Division is ready, willing and able to participate and help out in any way we can.

A couple of new rules coming out from EPA that we're watching very carefully. One is TMDL's which we talked about a little bit today. The TMDL Rule has been modified under the Clinton administration and will become effective on October 1st of this year. One of the interesting things about the TMDL Rule is that we can't ask EPA any questions about it because a funding appropriation rider was placed on the last days of the last Congress and EPA cannot spend any money in interpretation of the TMDL regulations. So, we can ask the questions, but they're not talking so we're sort of interpreting these things ourselves in trying to determine what it means for us right now. As of October 1st we'll be able to ask questions of EPA and hopefully they can begin to answer us. But it has serious ramifications to the State and particularly where the funding is going to come from for implementation plans associated with the new TMDL rules.

It's been in the papers that the Bush administration has pulled back on the arsenic rule pending an evaluation of the science of it. It doesn't have a whole lot of implication to the Division of Environmental Protection, but we're watching it very carefully because it may have issues related to discharge standards for the future. And then finally, under the Toxic Release Inventory, where Nevada rocketed from number 45 to number 1, primarily because of the inclusion of mining in the TRI reporting requirements, a lawsuit has been filed and the first round won by the mining industry in the State of Colorado. EPA has appealed that and we're awaiting hearing of that. If the Mining Association is successful, Nevada will likely drop many, many points and fall down perhaps back down to our previous position at 45. Any questions there?

Okay. We have undertaken a program that's sort of unique to the Division. It's called the AB 198 Program and it provides grant assistance to drinking water programs in the State of Nevada. This came to us as a result of Mike Turnipseed's dissolution of Water Planning, the Division of Water Planning and Hugh picked up some of their programs and we picked

up the 198 program. In a way it's a good fit for us because we operate a revolving loan fund, although that revolving loan fund is for wastewater concerns. This program, in our opinion, is a better fit with the State Health Division. There's been some concerns with Health taking it over at this time, so at least until the next legislative session we'll be continuing to operate the AB 198 grant program. We have also asked the Nevada legislature to increase the bonding capacity by \$19,000,000 of that program. It looks like that's going to be a successful effort and will continue to have money available for issues such as the revised arsenic rule for the next couple of years.

Finally, our AG status and you're lucky, you've had AG's fairly consistently for this body. We have not been that fortunate. The AG, just like many other entities in State government, has experienced dramatic turnover primarily because of pay issues. We've gone through 8 or 10 deputy attorney generals in the last 8 or 10 years. So we've been turning them over about once a year. As of Monday of this week, Amy Banales. Is that how you say her name Susan, do you know? Okay. They're so new that nobody even knows. Amy started with us on Monday and she will be our AG 100 percent of the time. Chuck Meredith has left us. Gabrielle Carr has left us at least temporarily and Bill Frey has returned back to service with us in terms of our legal representation. We also have the assistance of Chuck Meredith at certain times under some of our cases that he's been handling for quite some time. So, I think I see some stability coming, but we'll just have to wait and see and sort of watch it and make sure that we can have some consistency with our legal representation. Obviously that's very critical especially in the mining arena where we're dealing with 34 different bankruptcies and where bankruptcy is a whole different realm of the law and it really takes someone a long time to get up to speed on bankruptcy-type issues.

Commissioner Coyner: You misspoke yourself Allen. Thirty-four bankruptcies, 34 properties are a subset of a number of bankruptcies. But my point would be what's your FY 02 and 03 attorney general cost allocation? Just so that this Commission can know, there's no free lunch when you start talking with the lawyers.

Mr. Biaggi: Let's see, in our budgets I think we're approaching \$250,000 to \$300,000 a year for the entire Division in paying for AG services. Al, as I think you're eluding to, we recently got some information from the AG that they're going to tack on some additional allocations to that for FY 02 FY03. Interestingly enough in FY 02 our allocation goes down \$2,000, but in FY 03 it goes up \$87,000. For this Board the allocation for FY 02 is something low. I don't think there's any additional allocation.

Mr. Cowperthwaite: The way they arranged it is something like \$150 and then at the very end of the budgetary process they said, "Oh, we made a mistake. You owe us \$39,000."

Mr. Biaggi: It's actually \$37,000.

Mr. Cowperthwaite: \$37,000. Your budget, by the way, is only about \$38,000.

Mr. Biaggi: Right. So for the Environmental Commission the entire budget is \$36,000 but we're being assessed \$37,000 in attorney general's fees. So I've met with the attorney general's, how much is this woman making I mean that's . . .

Commissioner Crawford: About that much.

Mr. Biaggi: Because I mean obviously you're not here a lot. I mean your not dealing with Commission business to a significant degree.

DAG Gray: No. And I think if you talk to Wayne Howell about that we're going to start giving you the monthly reports that we send to our internal accounting office so that you can see where that is coming from. Because we were a little surprised too. I know I work hard, but . . .

Mr. Biaggi: We're not saying you're not worth it. As Susan has indicated, I've met with Wayne Howell and I've asked for all of the billings going back since 1997 for us to review and I've asked them to submit all future billings on a monthly basis to us so we can track this. It's a rather complicated system how they assess it. It goes back two and a half years on an hourly basis and the Attorney General's office doesn't even do the work. It's done through a contractor through the budget office. So even the AG's office couldn't adequately explain it. So we're going to keep a very close eye on that in the future. We're going to see what sort of relief we can get for the next couple of years because obviously our budgets can't take those kinds

of hits for legal services. That's all I have. If you have any questions of me I'd be happy to answer them.

Chairman Close: Thank you Allen.

Mr. Biaggi: Thank you.

Chairman Close: Any comment from the public? I guess that concludes our meeting. Anything else David?

Mr. Cowperthwaite: I would say that I think that we were looking at scheduling probably the issue of Southern Cal Edison in Laughlin and that will probably be the week of June 18th, probably the 19th 20th or 21st, which is Tuesday, Wednesday or Thursday. So I'll be getting back in contact with everybody about that. We'll move forward and get that variance processed.

Meeting adjourned at 3:00 p.m.

Nevada State Environmental Commission
Regulatory Hearing
Exhibit Log

Hearing Date: May 10, 2001

Location: NDOW - Reno

#	Item	Item Description	Reference Petition #	Offered	Accepted
1	1 Page Amendment	Proposed amendments dated May 10, 2001 from the Bureau of Water Pollution Control, NDEP	2001-07	YES	YES
2	3 Page Letter	Faxed transmittal of letter sent to Melvin Close, Chairman of the State Environmental Commission dated May 7, 2001 from Gordon DePaoli of Woodburn and Wedge regarding the Water Quality Standards for Walker Lake	2000-10	YES	YES
3	3 Page Letter	Faxed transmittal of letter sent to the Nevada State Environmental Commission from Louis D. Thompson, Walker Lake Working Group dated May 8, 2001 regarding the Water Quality Standards for Walker Lake	2000-10	YES	YES
4	1 Page Letter	Letter dated January 22, 2001 from Stacy M. Jennings, Executive Director of the State of Nevada Dairy Commission to David Cowperthwaite, State Environmental Commission regarding proposed revisions to Nevada Recycling Regulations dated January 17, 2001 Note: this letter was previously exhibited as Exhibit No. 9 at the February 15, 2001 Hearing of the Nevada State Environmental Commission	2001-03 and 2001-04	YES	YES
5	1 Page Amendment	Proposed amendment dated May 10, 2001 from the Bureau of Waste Management, NDEP	2001-04	YES	YES
6	1 Page Amendment	Proposed amendment dated May 10, 2001 from the Bureau of Waste Management, NDEP	2001-03	YES	YES
7	1 Page List	List showing comparison of fee structure for Class II and Proposed Class III Stationary Sources	2001-05	YES	YES
8	2 Page Amendments	Proposed amendments dated May 10, 2001 from the Bureau of Air Quality, NDEP	2000-12	YES	YES
9	2 Page Letter	Letter dated May 8, 2001 from Susan Lynn, Executive Director, Public Resource Associates to the Environmental Commission regarding the Water Quality Standards for Walker Lake	2000-10	YES	YES
10	2 Page letter & 3 Page Letter	Letter dated August 31, 1999 from the Arizona Dept of Environmental Quality Jacqueline Schafer Director to Admiral Froman of the US Navy; and a letter undated from the Arizona Dept of Environmental Quality Jacqueline Schafer Director to Admiral V.Z. Froman of the U.S. Navy	2000-12	YES	YES

Nevada State Environmental Commission
Regulatory Hearing
Exhibit Log

Hearing Date: May 10, 2001

Location: NDOW - Reno

11	8 Page letter with 11 color photos and 5 attached letters	Letter dated may 4, 2001 from Rear Admiral F.R. Ruehe of the U.S. Navy to Allen Biaggi of the DCNR/NDEP	2000-12	YES	YES
12	1 Page letter	Letter dated May 9, 2001 from the Toiyabe Chapter of the Sierra Club, Rose Strickland, Chair of the Public Lands Committee to the the Nevada State Environmental Commission	2000-10	YES	YES

Note: The May 10, 2001 exhibits were formally accepted at the Environmental Commission hearing of June 21, 2001 in Laughlin, Nevada.